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IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 7552

ROSLYN SLADE, EARLENE SCOTT, MONA LEISIA SCOTT, BERNARD BLACKSTONE, LARRY WILSON BLACKSTONE, ELLEN ELIZABETH BLACKSTONE, MAURICE L. HORSEY, III,

Appellants,

v.

BOARD OF EDUCATION OF HARFORD COUNTY, DAVID G. HARRY, PRESIDENT, HOWARD S. O'NEILL, G. ROBERT PENNINGTON, SAMUEL W. GALBREATH, MRS. ROBERT (BLANCHE S.) FLETCHER, CHARLES W. WILLIS, SUPERINTENDENT OF THE SCHOOLS OF HARFORD COUNTY,

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND (ROSZEL C. THOMSEN, Chief Judge)

BRIEF AND APPENDIX FOR THE APPELLEES

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The Daily Record Co., Baltimore 3, Md.

INDEX

Table of Contents

	PAGE
Statement of the Case and Opinions Below	1
Question Involved	2
Appellees Supplementary Statement of Facts	3
1. The Maryland Statutes	3
2. Actions of the Attorney General of Maryland and of the State Board of Education subsequent to the Second Opinion in the *Brown* case	7
3. Actions by the Board of Education of Harford County subsequent to June 22, 1955	8
4. Hearing of November 14, 1956	14
5. Proceedings before the State Board	18
6. Action of County Board on February 6, 1957	21
7. Hearing of April 18, 1957 in the District Court	22
8. Hearing of June 11, 1957 in the District Court	23
9. Opinion of June 20, 1957 and Judgment of July 3, 1957	24
Argument	24
Conclusion	44

Table of Citations

Statutes

Annotated Code of Maryland (1951 Edition):	
Article 77:	
Sections 1 to 208	3-6
Act of 1865, Chapter 160	4
Act of 1872, Chapter 377	4

Rules

PAGE

Federal Rules of Civil Procedure:
52(a) 24

Cases

Aaron v. Cooper,
143 F. Supp. 855 40
243 F. 2d 361 ..... 31, 40, 41
Booker v. Tennessee Board of Education, 240 F. 2d 689 ..... 39, 40
Briggs v. Elliott, 132 F. Supp. 776 ..... 27, 29, 30
Brown v. Board of Education of Topeka (Second Opinion) 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 ..... 7, 8, 27, 28, 29, 30
Carson v. Board of Education of McDowell County, 227 F. 2d 789 ..... 27, 29
Carson v. Warlick, 238 F. 2d 724 ..... 27, 29
Clemons v. Board of Education of Hillsboro, 228 F. 2d 853 39
Hood v. Board of Trustees of Sumter County School District No. 2, 232 F. 2d 626 ..... 27, 29
Jackson v. Rawdon, 235 F. 2d 93 30
Moore, et al v. Board of Education of Harford County, et al, Civil Action No. 8615 10
Moore, et al v. Board of Education of Harford County, et al,
146 F. Supp. 91 ..... 2, 24, 25
152 F. Supp. 114 ..... 2, 24, 25
New York Life Ins. Co. v. Tobin, 177 F. 2d 176 24
Plessy v. Ferguson, 163 U. S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 31
Robinson v. Board of Education of St. Mary's County, 143 F. Supp. 481 3
School Board of City of Charlottesville, Va. v. Allen, 240 F. 2d 59 30

	PAGE
School Board of the City of Newport News, Va. v. Atkins, 246 F. 2d 325	30
U. S. v. National Association of Real Estate Boards, 339 U. S. 485, 70 S. Ct. 711, 94 L. Ed. 1007	24
Willis v. Walker, 136 F. Supp. 177	32

Other Authorities

Opinions of Attorney General (of Maryland): Vol. 40, page 175	7

INDEX TO APPENDIX

	APP. PAGE
Hearing of November 14, 1956	1
Testimony of:	
Charles W. Willis—	
Direct Examination by Mr. Greenberg	1
Cross Examination by Mr. Barnes	9
Examination by the Court	16
David G. Harry—	
Direct Examination by Mr. Barnes	21
Cross Examination by Mr. Watts	23
Ernest Volkart—	
Direct Examination by Mr. Barnes	26
Hearing of April 18, 1957:	
Testimony of:	
Charles W. Willis—	
Examination by the Court	28
Hearing of June 11, 1957:	
Statements by Counsel	37

	App. Page
Testimony of:	
Charles W. Willis—	
Direct Examination by Mr. Barnes	38
Examination by the Court	46
Excerpts from Documentary Exhibits:	
Resolution of Citizens Consultant Committee of February 27, 1956	49
Transfer Policy of County Board of June 14, 1956	50
Desegregation Policy of County Board of August 1, 1956	51
Opinion of Attorney General of Maryland of June 20, 1955	53
Joint Resolution of State Board of June 22, 1955	55
Extension of Desegregation Policy of County Board of February 6, 1957	58
Proceedings before State Board on February 27, 1957	59
Statement of Chairman	60
Testimony of:	
Charles W. Willis—	
Direct Examination by Mr. Barnes	61
David G. Harry, Jr.—	
Direct Examination by Mr. Barnes	69
Opinion and Order of State Board of March 4, 1957	70
Review and Specification of Desegregation Policy by County Board of May 1, 1957	76
Letter from Mrs. Juanita Jackson Mitchell to Wilson K. Barnes, dated May 2, 1957	78
Modification of Desegregation Policy by County Board in regard to High Schools during transition period of June 5, 1957	78

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BRIEF FOR THE APPELLEES

STATEMENT OF THE CASE AND OPINIONS BELOW

This is an Appeal by one Original infant colored Plaintiff and six infant Intervening colored Plaintiffs from a Judgment entered on July 3, 1957 by the United States District Court for the District of Maryland (Thomsen, C.J.), ap-

proving a Plan as outlined in the Judgment for the desegregation of the public schools of Harford County, Maryland. The Appellees (Defendants below) are the Board of Education of Harford County; David G. Harry, President of that Board, Howard S. O'Neill, G. Robert Pennington, Samuel W. Galbreath, Mrs. Robert (Blanche S.) Fletcher, who are members of the Board of Education; and, Charles W. Willis, Superintendent of the Schools of Harford County. There were three substantial hearings before the District Court (in addition to two pre-trial conferences), at which oral testimony was taken and documentary evidence offered. There was also a substantial hearing before the Maryland State Board of Education. Judge Thomsen wrote two full Opinions. One was filed on November 23, 1956, App.[1] 4a to 15a, 146 F. Supp. 91. The other Opinion was filed on June 20, 1957, App. 16a-25a, 152 F. Supp. 114.

QUESTION INVOLVED

Were the findings by the District Court (Thomsen, C.J.) that the Board of Education of Harford County, Maryland had made a prompt and reasonable start toward the desegregation of the Public Schools of Harford County and that additional time was necessary to effectuate such desegregation as set forth in the District Court's Judgment of July 3, 1957 clearly erroneous?

The Appellees maintain that Judge Thomsen's findings were not clearly erroneous; on the contrary, they were clearly in accordance with the great weight of the evidence.

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[1] The reference "App." will be to the Appellants' Appendix. The reference to the Appellees' Appendix will be referred to as "Appellees' App. ".

APPELLEES' STATEMENT OF THE FACTS IN ADDITION AND SUPPLEMENTAL TO THE STATEMENT OF THE FACTS OF THE APPELLANTS

The Statement of Facts by the Appellants omits much of the background of the present case and the Appellants' Appendix omits much of the relevant testimony and proceedings. The Appellees deem it necessary to amplify the Appellants' Statement.

1. *The Maryland Statutes*

Chief Judge Thomsen carefully and fully analyzed the applicable Maryland Statutes in regard to the Maryland Public School System in his Opinion in *Robinson v. Board of Education of St. Mary's County*, 143 F. Supp. 481 (July 9, 1956). In the *Robinson* case, as in the case at bar, Judge Thomsen indicated that the Plaintiffs must first exhaust their administrative remedy by appeal to the State Board of Education, before the District Court would proceed with a decision in the case. The *Robinson* decision was not appealed to this Court which has not had the Maryland Statutory provisions in regard to the Maryland Public School System before it for consideration.

For the convenience of the Court and without attempting to repeat the excellent analysis by Judge Thomsen in the *Robinson* case, a brief summary of the Maryland Statutes is presented.

Article 77 of the Annotated Code of Maryland (1951 Edition) contains the relevant statutory provisions establishing in Maryland "a general system of free public schools; according to the provisions of this Article" (Sec. 1).

This Article in substantially its present form providing for "separate but equal" schools for white and colored

pupils, came into the Maryland law by the Act of 1872, Chapter 377. The original Maryland Statute providing for public schools on a state-wide basis was the Act of 1865, Chapter 160 (passed March 24, 1865), which provided for separate schools for white and colored pupils, with a provision, however, that expenditures for colored schools should be limited to school taxes collected from colored taxpayers, together with such donations as might be given for colored school purposes. As indicated this latter provision was eliminated by the Act of 1872, Chapter 377.

Sections 2, 3 and 4 of Article 77 provide that "educational matters affecting the State and the general care and supervision of public education shall be entrusted to a State Department of Education, at the head of which shall be a State Board of Education" (Sec. 2); "educational matters affecting a County shall be under the control of a County Board of Education" (Sec. 3) and "educational matters affecting a school district shall be under the care of a District Board of School Trustees" (Sec. 4).

Sections 16 and 17 set forth the general supervisory and appellate powers of the State Board. These powers include:

1. The enforcement of the provisions of Article 77.
2. The determination of the educational policies of the State.
3. The enactment of by-laws for the administration of the public school system having the force of law.
4. The institution of legal proceedings if necessary to enforce Article 77.
5. The explaining of "the true intent and meaning of the law, and they shall decide, without expense to the parties concerned, all controversies and disputes that arise under it, and their decision shall be final".

6. The exercise, through the State Superintendent, of "general control and supervision over the public schools and educational interest of the State".

7. Consultation with and advice to "County boards of education" and other designated officials.

The State Superintendent, by Sec. 35, is charged with the enforcement of all provisions of Article 77 and the by-laws of the State Board.

Sections 46 to 71 of Article 77 contain the statutory provisions in regard to the County Boards of Education. These County Boards are required "to maintain a uniform and effective system of public schools throughout their respective Counties (Sec. 48). The County Superintendent of Schools is made the executive officer, secretary and treasurer of the County Board (Sec. 50). The County Board "shall to the best of its ability cause the provisions of this Article, the by-laws, and the policies of the state board of education to be carried into effect." Subject to Article 77, the by-laws and policies of the State Board, the County Board "shall determine, with and on the advice of the county superintendent, the educational policies of the County and shall prescribe rules and regulations for the conduct and management of the schools" (Sec. 51). The County Board is required to "consolidate schools wherever in their judgment it is practicable, and to pay, when necessary, for the transportation of pupils to and from such consolidated schools."

The County Superintendent, as executive officer of the County Board, is required to "see that the laws relating to schools, the enacted and published by-laws of the State Board of Education and the rules and regulations and the policies of the county board of education are carried into

effect" (Sec. 143), and he "shall explain the true intent and meaning of the school laws, and of the by-laws of the State Board of Education. He shall decide, without expense to the parties concerned, all controversies and disputes involving the rules and regulations of the county Board of education and the proper administration of the public school system in the county, and his decision shall be final, except an appeal may be had to the State Board of Education if taken in writing within thirty days" (Sec. 144).

The statutory provisions in regard to the establishment of schools for white students are found in Sections 84 and 124 which provide that elementary schools "shall be free to all white youths between six and twenty years of age" and that "All white youths between the ages of six and twenty-one years shall be admitted into such public schools of the State, the studies of which they may be able to pursue; provided, that whenever there are grade schools, the principal and the County Superintendent shall determine to which schools pupils shall be admitted."

Sections 207 and 208 provided for the establishment of schools for colored students. By these Sections, the duty is placed upon the County Board "to establish one or more public schools in each election district for all colored youths, between six and twenty years of age, to which admission shall be free * * *, provided, that the colored population in any such district shall, in the judgment of the county board of education, warrant the establishment of such a school or schools; (Sec. 207) and that "schools for colored children shall be subject to all the provisions of this Article" (Sec. 208).

2. *Actions of the Attorney General of Maryland and of the State Board of Education Subsequent to the Second Opinion in the Brown Case.*

The Second Opinion in the *Brown* case, *Brown v. Board of Education of Topeka*, 349 U. S. 294, 75 S. Ct. 753, 99 L. Ed. 1083, was filed on May 31, 1955.

The State Superintendent of Schools (Dr. Thomas G. Pullen, Jr.) very shortly after this decision requested an Opinion of the Attorney General of Maryland in regard to the effect of the *Brown* decision upon the provisions of the State Law requiring separation of the races in the public schools of Maryland.

On June 20, 1955, just twenty days after the filing of the second Opinion in the *Brown* case, the Attorney General of Maryland rendered a formal Opinion (published in the Daily Record of June 29, 1955) in which he stated that "* * * *all constitutional and legislative acts of Maryland requiring segregation in the public schools of the State of Maryland are unconstitutional and must be treated as nullities.*" (Emphasis supplied.)

The Attorney General also stated that even though the State of Maryland were not a formal party to the *Brown* and companion litigation, "*We do not believe that differences in the mechanics of obtaining relief can limit in any sense the legal compulsion presently existing on the appropriate school authorities of the State of Maryland to make 'a prompt and reasonable start' toward the ultimate elimination of racial discrimination in public education.*" Report and Official Opinions of the Attorney General, (of Maryland) Vol. 40, page 175.

The State Board did not defy or seek to evade this opinion of the Attorney General of Maryland.

On the contrary, *two days later,* on June 22, 1955, the State Board passed a Resolution, in which, after various recitals, it stated:

> "Now that the Supreme Court has passed its mandate and has directed compliance with its decree with deliberate speed and with due regard to local conditions and in conformity with equitable considerations, the State Board of Education *calls upon* the local public school officials *to commence this transition at the earliest practicable date, with this view of implementing the law of the land.*" (Emphasis supplied.)

In the same resolution the Staff of the State Board is directed to cooperate with the local public school officials "to give effect * * * in the process of the transition from segregation to desegregation" and states that it "trusts that all citizens will exercise patience and tolerance *to the end that the law of the land may be implemented in the elimination of racial discrimination in the public schools of the State.*" (Emphasis supplied.)[2]

3. *Actions by the Board of Education of Harford County Subsequent to June 22, 1955.*

Eight days after the Opinion of the Attorney General of Maryland of June 20, 1955 and thirty days after the filing of the Second Opinion of the Supreme Court of the United States in the *Brown* case, the Board of Education of Harford County (hereinafter referred to as the "County Board") on *June 30, 1955* selected a Citizens Consultant Committee

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[2] Judicial notice may be taken of the fact that there have been two meetings of the General Assembly of Maryland since the Opinion of the Attorney General was promulgated, the "Short" Session of 1956 and the "Regular" Session of 1957 and that there were no Acts passed which attempted in any way to overrule or circumvent the Opinion of the Attorney General that any Maryland Constitutional or Statutory provisions requiring segregation in the public schools were nullities.

of 36 members from all sections of Harford County, 5 of whom were colored citizens, to consider the problem of desegregation of the Harford County public schools and to make recommendations to the County Board.

On July 27, 1955 a group of colored parents petitioned the County Board "to take immediate steps to reorganize the public schools under your jurisdiction on a non-discriminating basis."

The Citizens Consultant Committee held its first meeting on August 15, 1955, divided into Sub-Committees to consider (1) facilities, (2) transportation and (3) social relationship. A member of the Staff of the County Board served as a consultant to each sub-committee. These Sub-Committees met at various times during the remaining portion of 1955 and during January and February, 1956.

On February 27, 1956, the Citizens Consultant Committee held a meeting at which all of the Sub-Committees presented their final reports. None of the specific recommendations in those reports was adopted by the full Committee which *unanimously* adopted the following resolution.

> "To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions *to be granted* by the Board of Education in accordance with *such rules* and *regulations* as it *may adopt* and *in accordance with the available facilities in such schools;* effective for the school year beginning September, 1956." (Emphasis supplied.)

The Resolution of the Citizens Consultant Committee was adopted by the County Board on March 7, 1956.

On March 9, 1956, Civil Action No. 8615, *Moore, et al v. Board of Education of Harford County, et al*, which had been filed on November 29, 1955, came on for hearing on the Defendants' Motion to Dismiss. In this suit it was alleged that the County Board had "refused to desegregate the schools within its jurisdiction and had not devised a plan for such desegregation." The Plaintiffs were children, the four infant Original Plaintiffs in the case at bar with 17 other colored children through their parents and next friends. In Civil Action No. 8615 the Plaintiffs prayed (1) for a speedy hearing of their application for a preliminary and for a permanent injunction; (2) for a preliminary and permanent judgment that any orders, customs, practices and usages pursuant to which the Plaintiffs are segregated in their schooling because of race violate the Fourteenth Amendment; and (3) that the Court enter a preliminary injunction ordering the Defendants to promptly present a plan of desegregation to the Court which will expeditiously desegregate the Harford County schools and enjoin the Defendants from requiring the Plaintiffs and all other Negroes of public school age to attend or not to attend such public schools because of race.

In the Defendants' Motion to Dismiss the Complaint, the failure of the Plaintiffs to exhaust their administrative remedy by way of appeal to the State Board was alleged.

Counsel for the Defendants brought the Resolution of the County Board of March 7, 1956 to the attention of Counsel for the Plaintiffs and to the Court, and relying on the Resolution, the Plaintiffs dismissed Civil Action No. 8615.

On June 6, 1956 the County Board adopted a "Transfer Policy", (App. 8a-9a), which was duly advertised in the local newspapers. This "Transfer Policy" provided that if a child desired to attend a school other than the one in

which he was enrolled or registered, his parents must request a transfer between June 13 and July 15, 1956, stating the reason for the transfer and bearing the approval of the principal of the school the applicant was then attending. It provided that:

> "While the Board has no intentions of compelling a pupil to attend a specific school or of denying him the privilege of transferring to another school the Board reserves the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason."

The County Board stated in the "Transfer Policy" that it would finally consider the application for transfer at its meeting of August 1, 1956. Children whose applications were approved, were required to enroll on the regular summer registration date, August 24, 1956. Sixty colored students filed applications for transfer.

On August 1, 1956, the County Board adopted a "Desegregation Policy". This Resolution recited the appointment of the Citizens Consultant Committee, the recommendation of that Committee, the Resolution adopted by the County Board on March 7, 1956 and the "Transfer Policy" of June 6, 1956. It then provided:

> "The Supreme Court decision, which required desegregation of public schools, provided for an orderly, gradual transition based on the solution of varied local school problems. The resolution of the Harford County Citizens Consultant Committee is in accord with this principle. The report of this committee leaves the establishment of policies based on the assessing of local conditions of housing, transportation, personnel, educational standards, and social relationships to the discretion of the Board of Education.

"The first concern of the Board of Education must always be that of providing the best possible school system for all of the children of Harford County. Several studies made in areas where complete desegregation has been practiced have indicated a lowering of school standards that is detrimental to all children. Experience in other areas has also shown that bitter local opposition to desegregation in a school system not only prevents an orderly transition, but also adversely affects the whole educational program.

"With these factors in mind, the Harford County Board of Education has adopted a policy for a gradual, but orderly, program for desegregation of the schools of Harford County. The Board has approved applications for the transfer of Negro pupils from colored to white schools in the first three grades in the Edgewood Elementary School and the Halls Cross Roads Elementary School. Children living in these areas are already living in integrated housing, and the adjustments will not be so great as in the rural areas of the county where such relationships do not exist. With the exception of two small schools, these are the only elementary buildings in which space is available for additional pupils at the present time.

"Social problems posed by the desegregation of schools must be given careful consideration. These can be solved with the least emotionalism when younger children are involved. The future rate of expansion of this program depends upon the success of these initial steps."

In accordance with the Desegregation Policy, 15 of the 60 applications were granted, and 45 applications, including those of the 4 original infant Plaintiffs in the case at bar, were refused. On August 7, 1956, the County Superintendent of Schools, Charles W. Willis, notified the respective parents of the infant Plaintiffs in writing of the adoption of the Desegregation Policy (enclosing a copy) and advised them that "under the provisions of this policy your child

will not be allowed to transfer from his present school", and that the County Board had refused "your request for a transfer" (App. 11a).

No appeal to the State Board from the action by the County Superintendent was taken by the infant Plaintiffs or their parents or by any of the other applicants whose applications were refused.

On August 28, 1956, the complaint in the present suit, Civil Action No. 9105 (R. 3-8), was filed by the Original Plaintiffs, the infants Stephen Moore, Jr., Dennis Spriggs, Roslyn Slade and Patricia Garland, on behalf of themselves and all Negroes similarly situated, against the County Board and the County Superintendent of Schools. Moore sought transfer from Central Consolidated Elementary School in Hickory to the elementary school in Bel Air, where he resides; Spriggs from the Hickory School to the Junior High School in Edgewood, where he resides; Slade and Garland from Havre de Grace Consolidated School to Aberdeen High School, in the 9th and 11th grades respectively. They prayed for (1) advancement of the cause on the docket and (2) that the Court enter preliminary and permanent judgments that any "orders, customs, practices and usages pursuant to which said plaintiffs are each of them, their lessees, agents and successors in office from denying to plaintiffs and other Negro residents of Harford County of the State of Maryland admission to any Public School operated and maintained by the Board of Education of Harford County, on account of race and color" (R. 8).

On September 18, 1956, the Defendants filed a Motion to Dismiss (R. 9-12) substantially similar to the one filed in Civil Action No. 8615, including the point that the Plaintiffs had not exhausted their administrative remedy by appeal to the State Board (R. 9). A pre-trial conference was held

by Judge Thomsen on October 2, 1956, and on October 5, 1956, Judge Thomsen overruled the Motion to Dismiss without prejudice to the Defendants to raise the same points in their Answer (R. 13). The Defendants answered on October 14, 1957, setting up the defenses in the Motion to Dismiss as well as answering the allegations of the Complaint (R. 14-24).

4. *Hearing of November 14, 1956.*

The case was set for hearing on November 14, 1956. At this hearing both the Plaintiffs and Defendants offered oral testimony and introduced documentary exhibits.

The Sub-Committee Reports of the Sub-Committees on (1) Facilities (App. 40a-44a; R. 317-322), (2) Transportation (R. 337-338) and (3) Social and Recreational Aspects (R. 339-340) were offered in evidence by the Plaintiffs. These were objected to by Counsel for the Defendants on the grounds that they were preliminary reports of Sub-Committees, which were not adopted by the *full* Committee and were merged in the Report of the full Committee (Appellees' App. 1-2). They were marked for identification as Plaintiffs' Exhibit 1-A, B, C (and D) and were admitted in evidence by the District Court only for the limited purpose of showing "the field of study covered by the Sub-Committees of the General Committee" (Appellees' App. 4; 8).[3]

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[3] Although none of the Reports of the Sub-Committees has any legal or other effect, it is interesting to note that the recommendations of each Sub-Committee were quite different and none was adopted either by the full Committee or by the County Board. The Sub-Committee on Facilities "was of the opinion that provision can be made to accommodate such colored students as apply for admission to Harford County public schools for the year 1956-1957" (App. 44a; R. 322) without specifying the basis for such admission; the Sub-Committee on transportation recommended "that integration be a planned, gradual procedure — one grade a year is suggested" (R. 338); the Sub-

Mr. Willis testified that both ne and the County Board were familiar with the Opinion of the Attorney General of Maryland of June 20, 1955, and the Resolution of the State Board dated June 22, 1955; they understood that their effect on the laws of Maryland requiring or permitting segregation in the Public School System of Maryland was to make those laws "null and void" (Appellees' App. 10). He further testified that neither he nor the County Board had any intention not to comply with the Resolution of the State Board of June 22, 1955 (Appellees' App. 10) and then described the selection and appointment of the Citizens Consultant Committee. Of the 36 members, 5 members were Negroes — "presidents of Parent-Teachers Association, head of a national association for the protection of Colored People, people from various sections of the County, a Doctor from Havre de Grace * * *" (Appellees' App. 11-12). Mr. Willis then described the advertising for applications for transfers and the adoption by the County Board of the "Desegregation Policy" of August 1, 1956. Mr. Willis stated that he believed that he and the County Board had "made a reasonable start in good faith to carry forward the integration of the public schools in Harford County"; that the process would continue "based upon the experience obtained by the first year of operation under the plan"; and, that he and the County Board "have made a reasonable start toward the complete integration of the schools of Harford County in a reasonable time with deliberate speed and that this will be accomplished in a gradual and orderly manner" (Appellees' App. 15-16). He also testified that

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Committee on Social and Recreational Aspects recommended that "ability be considered in the grouping of all children, but that no class, for which children of both races are available, be of one race with the exception of elective courses. That the absorption of the colored pupils be in all schools and roughly on a 10 per cent basis, provided no hardship of long transportation be placed upon any pupils" (R. 339).

he was not "relying on any State law, statute, order, regulation, custom or usage which purports to require or permit continued segregation of the races in the public schools of Harford County" (Appellees' App. 16).

Judge Thomsen pointed out that he "hadn't heard Mr. Willis' good faith questioned" (Appellees' App. 16) and that "there is no question of inequality of facilities" (Appellees' App. 19).

Mr. Willis described the organization of the school system in Harford County — a six-three-three system —, that is, six years of elementary school, three years junior high school and three years of senior high school. The facilities, transportation problems and other factors were described by Mr. Willis (Appellees' App. 16-21).

David G. Harry, President of the County Board, confirmed the testimony of Mr. Willis as correct, his familiarity and that of the County Board with the Opinion of the Attorney General of June 20, 1955, the Resolution of the State Board of June 22, 1955, the effect of the Opinion and Resolution in making the Maryland laws requiring or permitting segregation in the public schools "null and void", and the intention of the County Board to comply with the Resolution of the State Board of June 22, 1955 (Appellees' App. 21-22). He understood that in promulgating the "Transfer Policy" of June 6, 1956 and the Desegregation Policy" of August 1, 1956, he was carrying out the Resolution of the County Board adopted March 7, 1956 (Appellees' App. 22). He also stated that he believed that the County Board had made a "reasonable start in good faith to carry forward the integration policy in the Harford County public schools, the plan adopted by the County Board had been "very successful thus far", the County Board intended to continue the integration of additional grades based on experience

obtained in the first year of operation under the Plan, and that the County Board has "made a reasonable start toward completing the integration of the schools of Harford County within a reasonable time and with deliberate speed" and that "this will be accomplished in a gradual and orderly manner" (Appellees' App. 22-23).

Ernest Volkart, United States Commissioner, and Chairman of the Citizens Consultant Committee, testified in regard to the meeting of that Committee on February 27, 1956 (Appellees' App. 26). He prepared the Resolution of the full Committee of February 27, 1956, and stated that his understanding of the practical effect of that Resolution as the Committee and he understood it:

> "* * * was that the change which had taken place under the Supreme Court ruling would have to be in a measure gradual and that the Citizens Committee could not prescribe any specific pattern, and that the resolution speaks for itself in that the School Board must make rules and regulations to integrate the schools gradually and consistent with the best interests of our citizens of Harford County" (Appellees' App. 27).

He stated that "the recommendations of the various Sub-Committees" were not "adopted by the full Committee". He thought that the actions of the County Board in adopting the Transfer Policy of June 6, 1956, and the Desegregation Policy of August 1, 1956, were "consistent with and in furtherance of the resolution of the Citizens Committee of February 27th, 1956" (Appellees' App. 27).

As a result of that hearing, Judge Thomsen filed an Opinion on November 23, 1956 (App. 4a-15a), 146 F. Supp. 91, in which he concluded (1) that the appointment of the Citizens Consultant Committee in the Summer of 1955, its study and recommendation and the Resolution of March 7, 1956,

were "a prompt and reasonable start" toward compliance with the ruling in the *Brown* case and (2) that the Plaintiffs must exhaust their administrative remedy by appeal to the State Board on or before December 15, 1956 (App. 15a). He intimated no opinion as to the sufficiency or propriety of the Desegregation Policy of August 1, 1956. Further proceedings in the case at bar were stayed pending the Appeal to the State Board.

5. *Proceedings Before the Maryland State Board of Education.*

On December 6, 1956, two of the Original Infant Plaintiffs in the case at bar, Stephen Moore, Jr., and Dennis Spriggs, and 10 additional children, Robert McDaniel, Earlene Scott, Mona Leisia Scott, Bernard Blackstone, Larry Wilson Blackstone, Ellen Elizabeth Blackstone, Maurice L. Horsey, III, David Roland Bell, James J. Bell, Jr., and Aurelia H. Boose, took an appeal to the State Board from the action of the County Superintendent of August 7, 1956 (R. 373). The Appeal of Aurelia H. Boose was withdrawn as she was not in Maryland at the time of the hearing before the State Board (Appellees' App. 61).[4]

At the hearing before the State Board on February 27, 1957, both parties were represented by Counsel and elaborate oral testimony and documentary evidence were offered (R. 399-534). Alexander Harvey, Assistant Attor-

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[4] Of the remaining 9 additional children, 8 were permitted to intervene in the case at bar (R. 51) over the objection of the Defendants (R. 48-50). These Intervenors were: Earlene Scott, Mona Leisia Scott, Robert McDaniel, David Roland Bell, Bernard Samuel Blackstone, Ellen Elizabeth Blackstone, Larry Wilson Blackstone and Maurice L. Horsey, III. The present Appellants are 6 of the Intervenors, *i.e.*, Earlene Scott, Mona Leisia Scott, Bernard Blackstone, Larry Blackstone, Ellen Elizabeth Blackstone and Maurice L. Horsey, III, and 1 of the Original Plaintiffs, Roslyn Slade, who did not, however, appeal to the State Board.

ney General of Maryland was also present to advise the State Board (Appellees' App. 60). The President of the State Board is Wendell D. Allen, a prominent Baltimore Attorney. William A. Gunter, a distinguished Attorney from Western Maryland is a member of the State Board, as is also Dr. Dwight O. W. Holmes, an eminent colored educator, and President Emeritus of Morgan College (Appellees' App. 59). All of the members of the State Board participated actively in the hearing.

The Appellants before the State Board offered the testimony of parents of some of the infants involved — Mr. Moore (R. 400-411), Mr. Spriggs (R. 420-427), and the Reverend Mr. Scott (R. 430-440). Certain documents were introduced into evidence (R. 412-414).

Mr. Willis, on behalf of the County Board, reviewed his educational qualifications (Appellees' App. 61); the prior history of what the County Board did in regard to the Opinion of the Attorney General of June 20, 1955, by the appointment of the Citizens Consultant Committee, the Resolution of the County Board of March 7, 1956, the Transfer Policy of June 14, 1956 and applications for transfer filed thereunder, and the Desegregation Policy of August 1, 1956 (Appellees' App. 62-63).

Mr. Willis then outlined the considerations which the County Board considered in formulating its Desegregation Policy of August 1, 1956. These were in brief: (1) the likelihood of successful application of the desegregation policy in Edgewood and Aberdeen, where there were Army bases, and a "desegregated" atmosphere; (2) the wisdom of beginning the desegregation program with the younger children in the lower grades (a) where social problems were not so great and (b) both white and colored pupils would have the same educational program and background

and could progress together from grade to grade; and (c) the available school facilities. In regard to this latter consideration, Mr. Willis pointed out that there had been a 100% increase in the Harford County school population in the past 10 years (from approximately 7,000 to 14,000) during which period the County Board has spent approximately $14,000,000 for school construction. The County Board has a $3,000,000 building program projected, one-half for 1957 and the other half for 1958. The only elementary schools which had available facilities for the desegregation program on August 1, 1956, were Edgewood and Aberdeen, and Perryman, where there were no applications, and Darlington, in a very rural area, where there was only one application (Appellees' App. 63-66).

The County Board's "Extension of the Desegregation Policy for 1957-1958", adopted February 6, 1957, was brought to the State Board's attention. This Resolution, in effect, extended desegregation to all of the elementary schools and all classes in those schools for the school year 1957-1958 which were not more than 10% overcrowded as of February 1, 1957. Mr. Willis explained that schools which are 10% overcrowded as of February 1, 1957, would be from 16% to 20% overcrowded in the fall of 1957, the beginning of the 1957-1958 school year. The normal class size was based on an average of 30 pupils for each class room. This is in accordance with the State and National Standard (App. 33a). The building program would eliminate all of the overcrowding in the elementary schools by September, 1958, if there were no unforeseen developments in the building program (Appellees' App. 68). Mr. Willis pointed out that the new Junior College at Bel Air would be opened in September, 1957, on a desegregated basis (Appellees' App. 68).

Mr. Willis stated that the County Board had moved forward in the desegregation of the public schools of Harford County "on a reasonable basis" and "with all practicable and deliberate speed" (Appellees' App. 68).

Mr. Harry, the President of the County Board, confirmed the testimony of Mr. Willis (Appellees' App. 69).

On March 4, 1957, the State Board by a *unanimous decision* dismissed the appeals, finding that (1) the County Board had acted within the policy established by the State Board, (2) the County Superintendent had acted in good faith within the authority set forth in the Desegregation Policy adopted on August 1, 1956, by the County Board; (3) that the Desegregation Policy of August 1, 1956, was adopted in a bona fide attempt to make a reasonable start toward desegregation of the Harford County public schools; (4) that the initial efforts had been carried out without any untoward incidents (Appellees' App. 70-76).

The State Board also took cognizance of the Resolution of the County Board of February 6, 1957, entitled "Extension of the Desegregation Policy for 1957-1958", (which had been passed by the County Board pending the appeal to the State Board and which will be considered below) and of the testimony that the proposed Harford County Junior College to be opened in Bel Air in the fall of 1957, would be opened on a desegregated basis, as well as the testimony that the present program of new buildings and additions will make further desegregation possible (Appellees' App. 75-76).

6. *Action of the County Board on February 6, 1957.*

As above pointed out, the County Board, on February 6, 1957, passed a Resolution for "Extension of the Desegregation Policy for 1957-1958". In effect, it extended desegre-

gation to *all* grades of *all* the elementary public schools in Harford County where space was available. It further provided:

> "Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom.
>
> "Under the above provision, applications will be accepted for transfer to all elementary schools except Old Post Road, Forest Hill, Bel Air, Highland, Jarrettsville, the sixth grade at the Edgewood High School, and Dublin. Such applications must be made during the month of May on a regular application form furnished by the Board of Education, and must be approved by both the child's classroom teacher and the principal of the school the child is now attending.
>
> "All applications will be reviewed at the regular June meeting of the Board of Education and pupils and their parents will be informed of the action taken on their applications prior to the close of school in June, 1957."

7. *Hearing in the District Court on April 18, 1957.*

After the decision of the State Board on March 4, 1957, Judge Thomsen held a second pre-trial conference on March 29, 1957. A hearing was held before Judge Thomsen on April 18, 1957. Again oral testimony was taken and documentary evidence offered, including the proceedings before the State Board.

Mr. Willis testified fully in regard to the School System generally in Harford County and in particular in regard to the individual schools — the ones which are overcrowded and to what extent, as well as other relevant details (Appellees' App. 28-37).

8. *Hearing in the District Court on June 11, 1957.*

Judge Thomsen had indicated that the Plan of the County Board was generally acceptable for elementary schools, but that he was doubtful about postponing desegregation completely in the High Schools until normally accomplished by the Plan's operation in the elementary schools with promotions to the High Schools in regular course. Judge Thomsen suggested that the parties try to agree on some plan for the High Schools during the transition period. This was attempted but Counsel for the Plaintiffs would not agree on any limitation of any number of colored pupils in the High Schools but insisted that "the Plaintiffs and the class they represent should be admitted to the High Schools without any racial restrictions whatsoever" (Appellees' App. 78).

The County Board modified its Desegregation Plan for the High Schools of Harford County during the interim period by providing for applications for transfers to High Schools near the applicant's home to be approved or disapproved on the "basis of probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested" (Appellees' App. 79).

Mr. Willis explained the practical operation of the Modification (Appellees' App. 42-49).

9. Opinion of June 20, 1957 and Judgment of July 3, 1957.

Judge Thomsen filed his Second and final Opinion on June 20, 1957 (App. 16a-25a). Based on that Opinion, Counsel for the Plaintiffs prepared a proposed form of Judgment (to the form of which Counsel for the Defendants interposed no objection), and this Judgment was signed and filed on July 3, 1957 (App. 1a-3a).

The Appellants noted their Appeal from the Judgment of July 3, 1957 on July 25, 1957 (R. 587).

ARGUMENT

The Findings by the District Court (Thomsen, C.J.) that the County Board had Made a Prompt and Reasonable Start Toward the Desegregation of the Public Schools of Harford County and that Additional Time was Necessary to Effectuate Such Desegregation as Set Forth in the Judgment of July 3, 1957, Were not Clearly Erroneous.

There seems to be no contention by the Appellants that the District Court did not recognize and apply the applicable law. They contend that the District Court erred in concluding that the Appellees met the burden of showing the necessity for limited delay incident to the Desegregation Plan set forth in the Judgment of July 3, 1957. This Appeal, therefore, essentially presents an alleged error involving a finding of fact. It is well established by Rule 52(a) of the Federal Rules of Civil Procedure and by the decisions of the Supreme Court of the United States and of this Court[5] that the Appellants must establish that the

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[5] *U.S. v. National Association of Real Estate Boards*, 339 U.S. 485, 70 S. Ct. 711, 94 L. Ed. 1007 (1950 — Douglas, J.) and see other Supreme Court cases cited by Mr. Justice Douglas at page 495 of 339 U.S. 485.

New York Life Ins. Co. v. Tobin, 177 F. 2d 176 (1949 — C.A. 4th, Per Curiam) and cases cited on page 177 of the Opinion.

findings of the District Court were "clearly erroneous" in order to obtain a reversal.

It would perhaps have been sufficient for the Appellees merely to refer to the careful and comprehensive Opinions of the District Court — the Opinion of November 23, 1956 and of June 20, 1957 (App. 4a-25a) — and the Judgment of July 3, 1957 itself, to show that the findings of the District Court were not clearly erroneous, but were clearly in accord with the great weight of the evidence. Indeed, these Opinions and the facts show that the District Court went beyond the requirements of the applicable law with a view to expediting the progress of desegregation in the public schools of Harford County and the protection of the constitutional rights, not only of the colored pupils as a class, but also of individual plaintiffs involved in the litigation.[6] The public importance of the case, not only to

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[6] The Appellants properly point out in their Brief (page 2) that the "estoppel" phase of the suit is not at issue in the case at bar. This is because the Appellees did not file a Cross-Appeal. The determination of the County Board not to file a Cross-Appeal to raise this issue was deliberate. The County Board does not wish to be thought to acquiesce in the District Court's determination that its Desegregation Policy of August 1, 1956, was not in accord with and consistent with its Resolution of March 7, 1956. On the contrary, it was, and is, the position of the County Board that the intention and understanding of the draftsman of the Resolution, Mr. Volkart, was to leave the *granting* of any applications for transfer in the hands of the County Board without specific recommendations, but in accordance with the rules and regulations of the County Board and with available facilities. This was the understanding of Counsel for the County Board, the President of the County Board, and County Superintendent. This understanding is in accord with the language of the Resolution of March 7, 1956, itself. Then too, if the Plaintiffs in Civil No. 8015, had not voluntarily dismissed the Complaint, it would have been dismissed — or at least postponed substantially — because the Plaintiffs had not exhausted their administrative remedy by appeal to the State Board. There was, therefore, no real prejudice to the Plaintiffs by the voluntary dismissal of the Complaint in Civil No. 8015. It would not have been "inequitable" to have required the Infant Plaintiffs Moore and Spriggs to have complied with the Plan applicable to others in

Harford County, but to the people of the State of Maryland generally, seemed to require a full consideration of the background, both Statutory and administrative, of the case and all of the applicable facts in the particular case.

The decision of this Court in this case is of more than passing importance. It is of particular importance to the entire problem of desegregation throughout the United States. Maryland is a border State, which from the beginning of its State-wide educational system in 1865 has had separation of the races in the public school system. This continued until 1955, a period of 90 years. The system of "separate but equal" separate school facilities was instituted in 1872 and continued until 1955, a period of 83 years. There has been no defiance of the decision in the *Brown* case in Maryland. On the contrary, both the political and administrative officials of the State have officially acted to require compliance with that decision with more than "deliberate speed". In the case at bar, it is conceded that the County Board has acted in good faith to desegregate the public schools in Harford County. The State Board — the highest administrative educational authority in the State — has approved the County Board's action after a full and careful hearing. There has been no conflict be-

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their situation, particularly as there is no question that the school facilities which they enjoy are equal — if not superior — to those which are provided in Paragraph 6 of the Judgment of July 3, 1957. The District Court indicated that if an appeal or cross-appeal were taken by the County Board he would not supersede the operation of the Judgment of July 3, 1957, pending appeal. Under these circumstances, the County Board decided that it *would be inequitable* to displace the infant Plaintiff Moore from the sixth grade at the Bel Air School and the infant Plaintiff Spriggs from the eighth grade at Edgewood High School in the course of a school year even if the County Board were successful in a cross-appeal, particularly in view of the nature of the general Plan adopted by the County Board and incorporated in the Judgment of July 3, 1957. It was for this reason alone that a cross-appeal was not taken.

tween the Federal Courts and State officials. There has been no untoward incidents arising in Harford County as a result of the Plan. An affirmance of Judge Thomsen's decision by this Court may well point the way to a rational, equitable and practical solution to the difficult problems posed in many other localities by the *Brown* decision.

Judge Thomsen's decision is also of more than judicial importance in view of the unusual, if not unique, circumstance that before his appointment as District Judge, he was President of the Board of School Commissioners of Baltimore City — or as he modestly puts it — "I have had some experience with School Boards" (Appellees' App. 10). His decision has the added value of his administrative experience as the head of the local governing body of the public school system of one of the largest cities in the United States.

The law governing the case appears in the Second Opinion of the Supreme Court of the United States in *Brown v. Board of Education of Topeka*, 349 U.S. 294, 75 S. Ct. 753, 99 L. Ed. 1083 (May 31, 1955, Warren, C.J.) and in the decisions of this Court in *Carson v. Board of Education of McDowell County*, 227 F. 2d 789 (1955, Per Curiam); *Hood v. Board of Trustees of Sumter County School District No. 2*, 232 F. 2d 626 (1956, Per Curiam); *Carson v. Warlick*, 238 F. 2d 724 (1956, Parker, C.J.) and of the Three-Judge Court, composed of Chief Judge Parker, Circuit Judge Dobie and District Judge Timmerman, in *Briggs v. Elliott*, 132 F. Supp. 776 (1955, Per Curiam).

In their Brief, page 9, the Appellants seek to narrow substantially the effect of the Second Opinion in the *Brown* case. *All of the language* of Chief Justice Warren's Opinion is important. He stated for the Supreme Court that:

"Full implementation of these constitutional principles *may require solution of varied local school problems. School authorities have the primary responsibility for elucidating, assessing, and solving these problems;* courts will have to consider whether the action of school authorities *constitutes good faith implementation of the governing constitutional principles.* Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts." (Emphasis supplied.) 349 U S. at page 299.

"In fashioning and effectuating the decrees, the courts will be guided by *equitable principles.* Traditionally, equity has been characterized by a *practical flexibility in shaping its remedies* and by a facility for *adjusting and reconciling public and private needs.* These cases call for the exercise of these traditional attributes of equity power. At stake is the personal interest of the plaintiffs in admission to public schools *as soon as practicable on a nondiscriminatory basis.* To effectuate this interest may call for *elimination of a variety of obstacles in making the transition to school systems operated in accordance with the constitutional principles set forth in our May 17, 1954, decision.* Courts of equity *may properly take into account the public interest in the elimination of such obstacles in a systematic and effective manner.* But it should go without saying that the vitality of these constitutional principles cannot be allowed to yield simply because of disagreement with them." (Emphasis supplied.) 349 U.S. at page 300.

"While giving weight to these public and private considerations, the courts will require that the defendants make a *prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an*

effective manner. The *burden rests upon the defendants to establish that such time is necessary in the public interest and is consistent with good faith compliance at the earliest practicable date.* To that end, the courts *may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts* and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. They will also consider the *adequacy of any plans* the *defendants may propose* to meet these problems and to *effectuate a transition* to a racially *nondiscriminatory* school system. During this period of transition, the courts will retain jurisdiction of these cases." (Emphasis supplied.) 349 U.S. at page 300.

This Court, in the Opinions mentioned, has established that:

1. That if a proper administrative remedy is provided by the State Law, the Plaintiffs in this type of case must exhaust that remedy and "the Courts of the United States will not grant injunctive relief until administrative remedies have been exhausted." 227 F. 2d at 790. (To the same effect 238 F. 2d at 727; 232 F. 2d at 626.)

2. "The federal courts manifestly cannot operate the schools." (227 F. 2d at 790) and the *Brown* decision did not provide "that the federal courts are to take over or regulate the public schools of the States" (132 F. Supp. at 777).

3. Interference by injunction with the schools of a state is as grave a matter as interfering with its fiscal operations and should not be resorted to 'where the asserted federal right may be preserved without it' " (227 F. 2d at 791).

4. Nothing in the Constitution of the United States or in the decision in the *Brown* case "takes away from the people

freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action" (132 F. Supp. at 777).

In the Second Opinion of the Supreme Court, it is pointed out, in effect, that *all* matters and problems which affect the school system *as a system* and which result or may result from the change-over to a desegregated system, may be considered and evaluated by the local school authorities in formulating plans and in determining the time of completion so long as the local board (a) acts in good faith and (b) there is no attempt to resist the application of the Constitutional principles involved (1) entirely or (2) for an unreasonable time. The Supreme Court clearly indicates that the judgment of the local school authorities is to be given great weight.

The West Virginia District Court cases on specific plans (cited on page 10 of the Appellants' Brief) are not very helpful as the background and particular facts in each case are quite different. Essentially each case stands on its own facts so far as a specifis plan is concerned. Three of the cases cited by the Appellants arose in jurisdictions in which the State and Local authorities were actively resisting *any* desegregation of the public schools *at any time*, had made no start, reasonable or otherwise, and in which no effort had been made to meet the burden upon the local authorities to establish the need for additional time to complete the desegregation program.[7] It is well settled, however, that

[7] *School Board of the City of Charlottesville, Va. v. Allen*, 240 F. 2d 59 (1956, CA-4 — Parker, C.J.) cd. 353 U.S. 910.

School Board of the City of Newport News, Va. v. Atkins, 246 F. 2d 325 (1957, CA-4 — Per Curiam).

Jackson v. Rawdon, 235 F. 2d 93 (1956, CA-5 — Hutcheson, C.J.).

a gradual, grade-by-grade, method of implementing a bona fide desegregation plan is in accordance with the Supreme Court's Second Opinion in the *Brown* case. *Aaron v. Cooper*, 243 F. 2d 361 (CA-8, 1957, Vogel, Ct. J.).

What then was the factual situation in regard to the public school system in Harford County?

Harford County is predominantly a rural County. There are two large government reservations in the southern end of the County — Aberdeen Proving Ground at Aberdeen and the Army Chemical Center at Edgewood. On the government reservations, the housing developments are operated on a non-segregated basis.

In accordance with the Maryland law and policy prior to 1955, the Harford County public school system provided "separate but equal" school facilities for white and colored students as permitted by the Opinion of the Supreme Court of the United States in *Plessy v. Ferguson*, 163 U.S. 537, 16 S. Ct. 1138, 41 L. Ed. 256 (1896, Brown, J.). At the time of this suit, the County Board provided two large "consolidated" schools for approximately 1100 colored students, comprising elementary, junior high and senior high school classes at Hickory and at Havre de Grace. This was in accord with the County Board's 6-3-3 system, that is, 6 years of elementary school, 3 years of junior high school and 3 years of senior high school. The same system was provided for approximately 12,600 white students. There were 18 white elementary schools[8] and 5 high schools, comprising junior and senior high schools, at Bel Air, Bush's Corner (North Harford), Edgewood, Aberdeen and Havre de Grace.

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[8] Emmorton, Edgewood, Aberdeen, Halls Cross Roads, Perryman, Churchville, Youth's Benefit, State Ridge, Darlington, Havre de Grace, Old Post Road, Bel Air, Highland, Forest Hill, Jarrettsville, Dublin, 6th grade at Aberdeen High School and sixth grade at Edgewood High School.

It is conceded that the school facilities for the colored students were equal if not superior to the facilities for the white students. Cf. *Willis v. Walker*, 136 F. Supp. 177 (1955, W.D. Ky., Swinford, D.J.) at page 179.

The students, both white and colored, were transported free of charge to their schools unless they lived within walking distance of the respective schools. White students were required to attend the nearest white school and colored students the nearest colored school.

There were white teachers in the white schools and colored teachers in the colored schools.

During the past 10 years, the school population has increased 100% (from approximately 7,000 to 14,000) and the County Board has spent during that period approximately $14,000,000.00 for school construction. To relieve overcrowding and care for additional students, the County Board has a $3,000,000.00 building program, one-half for 1957 and the other half for 1958.

As pointed out in the Supplementary Statement of the Facts, the Attorney General of Maryland and the State Board moved with *haste* (rather than "deliberate speed") to announce the change in the long established Maryland policy in regard to separation of the races in the public schools. The County Board moved with great expedition to select the Citizens Consultant Committee, that is, on June 30, 1955, just 1 month after the filing of the Second Opinion in the *Brown* case. Although the colored students only amount to approximately 10% of the entire school population, 5 of the 36 members of the Citizens Consultant Committee, approximately 14% of the entire membership, were representative Negroes holding important positions or having a professional status. This Committee met

promptly on August 15, 1955 and subdivided into Sub-Committees which studied the problems involved. The Sub-Committees presented their final reports at a meeting of the full Committee on February 27, 1956; none of the recommendations in the reports of the Sub-Committees was adopted, but the Resolution of February 27, 1956 was unanimously adopted by the *full* Committee, in effect leaving the granting of applications to the judgment and discretion of the County Board. The County Board, 8 days later, adopted the same Resolution.

Judge Thomsen held that these actions constituted a prompt and reasonable start toward compliance with the Supreme Court's ruling (App. 15a). They were most certainly prompt. They were entirely reasonable. There is no evidence to the contrary.

Well before the beginning of the school year for 1956 (September 1956), the County Board on June 6, 1956 adopted its Transfer Policy, advising of the right to file applications for transfer to other schools, but specifically indicating that it reserved the right "during the period of transition to delay or deny the admission of a pupil to any school if it deems such action wise and necessary for any good and sufficient reason."

The County Board adopted its "Desegregation Policy" on August 1, 1956, outlining its proposals for the desegregation of the schools in Harford County and its reasons for the Plan. The County Board pointed out that the Supreme Court's decision "provided for an orderly, gradual transition based on the solution of varied local school problems and that the Resolution of the Citizens Consultant Committee was in accord with that principle and left to the discretion of the County Board the "establishment of policies based on the assessing of local conditions of housing,

transportation, personnel, educational standards and social relationships". The County Board recited that studies in areas where complete desegregation had been practiced indicated a lowering of school standards that was detrimental to all children and that experience in other areas showed that bitter local opposition to desegregation in a school system "not only prevents an orderly transition, but also adversely affects the whole educational program." The County Board also pointed out that its first concern must always be that of providing the best possible school system for *all* of the children of Harford County." (Emphasis supplied.) The County Board concluded that it would be best to start the desegregation policy with younger children where social problems posed by desegregation could be solved with the least emotionalism. It selected the first three grades in Edgewood Elementary School and Halls Cross Roads Elementary School for the approval of applications of Negro pupils from colored to white schools, pointing out that there were already integrated housing developments in these areas and that, with the exception of 2 small schools, (in one of which there was one application, in the other, none) these were the only elementary buildings in which space was available at the present time. The County Board further stated that the future rate of expansion of the program depended upon the success of the initial steps.

The County Board, in accordance with the policy, approved 15 of the 60 applications for transfer received, or 25%, and rejected 45 applications.

The program was successful and on February 6, 1957 (again well in advance of the 1957-1958 school year beginning September 1957), the County Board substantially extended its desegregation policy by adopting a Resolution

entitled "Extension of Desegregation Policy for 1957-58" (App. 19a). This, in effect, provided for the acceptance of applications for transfer from pupils wishing to attend *all elementary schools* in *all classes* in the area in which they lived, if space were available. Space would be considered available in schools not 10% overcrowded, as of February 1, 1957. All capacities were based on the State and National standard of 30 pupils per class room (App. 33a).

Mr. Willis, the County Superintendent, pointed out that in the opinion of the County Board the adjustment of pupils transferring from a colored to a white school could be accomplished more smoothly and with better results for the education of the pupil involved if the transfer were made to a school which was not substantially overcrowded. Mr. Willis further pointed out that a school which was 10% overcrowded as of February 1, 1957 would be more overcrowded in September, 1957. In his judgment, the figures would be 5% to 10% higher in September, 1957 (Appellees' App. 37).

Mr. Willis summarized the factual situation in regard to the 7 schools which were overcrowded more than 10% as of February 1, 1957 (Appellees' App. 35-37), as follows:

Name of Elementary School	*Percentage of Overcrowding as of February 1, 1957*
Sixth grade at Eggewood	12%*
Old Post Road	24%
Forest Hill	17%
Bel Air	14%
Jarrettsville	10%
Highland	16%
Dublin	14%

*Mr. Willis pointed out that this school would be considerably overcrowded this year "because we will hold every child that is there and will bring in another sixth grade" (Appellees' App. 36).

The overcrowding in three of these Schools, Old Post Road, Bel Air and Highland, will be eliminated by September, 1958 and the overcrowding in the remaining four Schools, Forest Hill, Jarrettsville, Dublin and Sixth Grade at Edgewood High School, will be eliminated by September 1959 by the Building Program if there are no unforeseen circumstances arising in that Program. Summarizing the situation in the elementary schools by percentages, 61% of the elementary schools were desegregated in full as of September, 1957; 17% will be fully desegregated as of September, 1958; and, the remaining 22% will be fully desegregated as of September, 1959. Judge Thomsen held that the reasons given for this policy in regard to overcrowding were reasonable and that although this factor would not justify unreasonable delay, under the circumstances of this case, it justified that the one or two years delay in desegregating the 7 schools mentioned (App. 21a).

Judge Thomsen had indicated that although he was tentatively of the opinion that the desegregation for the elementary schools was reasonable and that the County Board had met the burden of proof in requiring the one to two years delay in the desegregation of the 7 schools mentioned, he was tentatively of the opinion that there could be some acceleration in the desegregation program so far as the high schools were concerned. He suggested that Counsel for the respective parties attempt to agree upon some reasonable plan for the interim period.[10]

[10] It should be kept in mind that the Harford County plan for desegregation would have worked automatically after the elementary schools were desegregated, as a colored student at one of the former white elementary schools would automatically proceed into the same junior high school as a white student in the same class. The entire high school system would thus be desegregated automatically by 1963 at the latest date, assuming that the County Board did nothing further in regard to its desegregation policy.

The Appellants make much of the fact that in June, 1955 there were only 60 applications for transfer and seek to use this figure as the number of applications which would inevitably be filed. It is significant, however, to note that although requested by the District Court to seek to reach an agreement on the question of admissions during the interim period, Counsel for the Appellants *refused to make any agreement as to the number of applications during the interim period* (Appellees' App. 78). In other words, the Appellants insisted that the matter be left entirely open to *any number* of colored pupils who might apply during the interim period. Obviously, the County Board could not undertake this type of program, as it might well have resulted in the complete disruption of the entire school system if there were a substantial number of applications for transfer from the colored high schools to the white high schools during the interim period. There would obviously be disruption of the transportation system, the classrooms, the teaching staff, both in the white and colored high schools, as it must be remembered that the colored teachers and principals in the colored high schools must also be considered in the entire problem. Even more importantly, a transfer from a colored elementary school to a white high school would cause the colored child to face problems which do not arise if that child had normally proceeded from the elementary school to the junior high school in regular course. As pointed out by Mr. Willis and also in Judge Thomsen's Opinion of June 20, 1957 (App. 22a), after a year or so in the high school, social groups, athletic groups and subject interest groups had begun to crystalize, friendships and attachments have been made. A child transferring to the school from another high school does not have the support of the group with which he has passed through the elementary school. A colored pupil transferring to an

upper grade during the interim period would not have the benefit of his older brothers, sisters or cousins already in the school, or of his parents, relatives or friends who have been active in the Parent-Teacher Association. Mr. Willis also pointed out and the District Court found as a fact that high school teachers generally, with notable exceptions, are less pupil conscious and more subject conscious and are less likely than the teachers trained for elementary grades, to be helpful in readjustment. Judge Thomsen pointed out that the County Board had sound reasons for making the transition on a year to year basis so that most colored children would have a normal high school experience, entering in the seventh grade and continuing through the same school.

To meet the problem posed by the interim period, so far as the high schools were concerned, the County Board, notwithstanding the inability to reach an agreement with Counsel for the Plaintiffs in regard to the matter, modified its Desegregation Policy on June 5, 1957 which would permit any colored student wishing to transfer to a high school nearer his home, to apply between July 1 and July 15, 1957 for transfer for the year beginning September, 1957. Such an application would be evaluated on an individual basis by a Committee consisting of the high school principals of the two schools involved, the Director of Instruction and the County Supervisors working in those schools. The guides and standards set up for the Committee were:

> "These applications will be approved or disapproved on the basis of the probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be limited to, the results of both standardized intelligence and

achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested" (App. 19a-20a).

The County Board again stated that it "and its professional staff would keep this problem under constant and continuous observation and study".

Judge Thomsen found that these guides and standards were reasonable and further that he had confidence in the integrity, ability and fairness of the County Superintendent, Mr. Willis, and of the principals, supervisors and others who would make the decisions under his direction. In any event, the District Court retained jurisdiction so that if any applicant or his parents thought that the plan during the interim period was not being equitably or properly applied, a prompt hearing in the District Court could be obtained.

The two cases from the Sixth Circuit, *Clemons v. Board of Education of Hillsboro*, 228 F. 2d 853 (1956, CA-6, Allen, Ct. J., Stewart Ct. J., concurring, Miller, Ct. J., dissenting) and *Booker v. Tennessee Board of Education*, 240 F. 2d 689 (1957, CA-6, Allen, Ct. J., Shackelford Miller, Jr., Ct. J., dissenting), cited by the Appellants on page 11 of their Brief, are quite distinguishable from the case at bar. In the *Clemons* case, there was an attempt by the Local School authorities in Hillsboro, Ohio, by use of a gerrymandered school district to circumvent and frustrate the law of Ohio since 1887 prohibiting segregation in the public schools of that State. The District Court, however, declined an injunction and its judgment "continued for an indefinite period the violation of law carried out by the Board of Education" (228 F. 2d at 857). The *Booker* case involved Memphis State College in which it was *anticipated that there would be an overcrowding* if all persons qualified for admission were admitted without restriction. The Board of Education

provided for gradual admission of qualified negro students, but there was no limitation on white students, either non-residents of Tennessee or non-residents of Memphis. There was no building program to take care of any anticipated increase. These cases are obviously quite different from the case at bar.

The case at bar has more similarity to the case of *Aaron v. Cooper*, 243 F. 2d 361 (1957 — CA-8, Vogel, Ct. J.), which involved a gradual desegregation of the public schools in Little Rock, Arkansas, beginning in that case, however, in the 10th, 11th and 12th grades, in the fall of 1957, then in the 7th, 8th and 9th grades and then in the 6 elementary grades, the entire program to be completed by 1963. Not only are substantially all of the administrative, pedagogical and other problems set forth in the District Court's Opinion in that case (*Aaron v. Cooper*, 143 F. Supp. 855), present in the case at bar, but, in addition, the County Board in the present case had a predominantly *rural* county with transportation and other problems, which were not present in the metropolitan area of Little Rock. Then too, the County Board's Desegregation Plan in this case provides for transfers (to the High Schools) during the interim period which was not a feature in the Little Rock plan, so far as the Elementary Schools were concerned in Little Rock during the interim period there.

Circuit Judge Vogel, after considering the *Clemons* and the *Booker* cases, supra, as well as *Willis v. Walker*, supra, pointed out that each case must rest on its own particular facts. The problems are "varied" as the Supreme Court pointed out in the *Brown* case. Judge Vogel then stated at page 364 of 243 F. 2d:

> "It was on the basis of such 'varied' school problems that the Supreme Court in the second Brown decision remanded the cases there involved to the local District Courts to determine whether the school authorities

> who possessed the primary responsibility, have acted in god faith, made a prompt and reasonable start, and whether or not additional time was necessary to accomplish complete desegregation. The question of speed was to be decided with reference to existing local conditions. There is here unqualified basis for the District Court's conclusions that the proposed plan constitutes a good-faith, prompt and reasonable start toward full compliance with the Supreme Court's mandate. Accordingly, we cannot say, even if we were so minded, that the District Court's conclusions were entirely erroneous and should be set aside. Nor can we say that a gradual program of integration beginning at the high school level and ultimately encompassing all grades is an unreasonable one."

The Appellees suggest that in several of the cases decided in the Lower Courts, the problem of overcrowding has been treated not as a racial problem but as a spatial problem. The Appellants overlook the fact that *during the transfer period*, the racial and the spatial considerations are closely related in that the colored pupils already have "space" in the existing colored schools and there is not sufficient "space" during the interim period in the overcrowded white school to permit transfer from the colored to the white schools. The fact that if a few white students whose parents moved into Harford County, applied during a school year for admission to the white school in their neighborhood during the transfer period and would be admitted, as the law requires, does not indicate any racial discrimination as the white pupil has *"no space"* to occupy, whereas the colored pupil has *his space* in the colored school. Counsel for the Appellants have never been willing to agree on *a number* of applications for transfer during the interim period. It cannot be assumed that the applications for transfer will necessarily be a small number. The

County Board in its Desegregation Policy has always sought to have the granting of the applications operate on an automatic or "policy" basis rather than to have each individual case considered specially. There are obvious administrative and other advantages to this type of system rather than to have each individual case evaluated on an individual basis. It adopted the individual basis procedure for High Schools during the interim period to take care of any individual case indicating a desirable transfer during that interim period.

Not only have the Appellants not challenged the good faith of the County Board and the County Superintendent, but the facts in the case at bar indicate overwhelmingly that these local school officials have made a sincere, honest effort to establish a workable and efficient desegregation plan which will not disrupt the school system of Harford County and which will be accepted by the reasonable and right-thinking people of Harford County.

The Appellants have suggested that it was quite improper for a County Board and a County Superintendent to give any consideration whatever to the possibility of strenuous or violent opposition to a desegregation plan. The Supreme Court has not stated this as the law, and it is not the law. On the contrary, the Supreme Court itself provides for a gradual, rather than an immediate, change-over from a segregated to a desegregated school system. Obviously opposition of a local community to such a transfer in its entirety cannot be permitted to "*devitalize*" the constitutional principles involved. The Supreme Court, however, clearly points out that the *public interest* which, of necessity, must include the maintenance of *public order* and *public tranquility*, especially in the operation of the *public school system*, must be considered by the District Court as well as

by the local school officials. This does not mean that there may be unreasonable delay, but it does mean that during an interim period of change from a segregated to a desegregated system, the application and the timing of the desegregation process may, in the good judgment of the County Board, be deferred or accelerated on a reasonable basis depending on the chances of success of the program. As the County Board has stated several times, its duty is to provide the best public school system it can for *all* the students of Harford County regardless of their color, and at the same times its duty is to implement within a reasonable time and with deliberate speed the decision of the Supreme Court in regard to the constitutional rights of the parties involved. This has been done on a reasonable basis by the County Board upon pedagogical considerations for the benefit of the entire school system and after evaluating administrative problems, personnel problems, transportation problems, and social adjustment problems involved in the situation. It is comforting to note that the plan is working well in the practical operation of the public schools. Local opposition has been moderated. The parents of some of the Appellants have testified that the racial atmosphere in Harford County is good and that there is community acceptance both in the public schools and in the Parent-Teacher Association of the desegregated system. These benefits are not lightly to be discarded, particularly in view of Chief Justice Warren's admonition that "the primary responsibility for elucidating, assessing and solving these problems" is upon the local school authorities, and also in view of the general policy of the Federal Courts not to interfere with the administration by the State of its public functions unless such interference is absolutely necessary for the protection of a constitutional right guaranteed by the Federal Constitution.

A review of this record discloses that not only were Judge Thomsen's findings not clearly erroneous but that they were clearly in accordance with the great weight of the evidence.

CONCLUSION

For the reasons and upon the facts stated above, this Court should affirm the Judgment of July 3, 1957 and require the Appellants to pay the Costs.

Respectfully submitted,

EDWARD C. WILSON, JR.,
WILSON K. BARNES,
Attorneys for Appellees.

APPENDIX TO APPELLEES' BRIEF NO. 7552

(R. 61-73): Wednesday, November 14, 1956

(Mr. Greenberg) We would like to call Mr. Willis, Your Honor.

CHARLES W. WILLIS,

was called as a witness for and on behalf of the plaintiffs and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Greenberg:

Q. Mr. Willis, what is your position? A. I am Superintendent of Schools, Harford County.

Q. How long have you held that position? A. Since July 15, 1945.

Q. As Superintendent of Schools of Harford County are you aware of a series of reports made by a group known as the Citizens Consultant Committee — I believe that is the name — are you aware of that? A. Yes.

Q. Do you have such of those reports here with you? A. I have several of the sub-committee reports that were in fact given to the Board of Education and were distributed to the members of the Committee.

Q. May I see them, please? A. Yes.

(Mr. Barnes) As to the sub-committee reports of the Citizens Consultant Committee, I will object to the admissibility of them in evidence because the final resolution of the Committee was the resolution of February 27, 1956, and it was that resolution which was presented to the members of the Board of Education, the one which was adopted by the members of the Board, so that any preliminary reports of sub-committees would obviously, I think, be merged into

the final action of the Committee, and it is only the final action of the Committee which would be admissible in evidence in this case.

(The Court) Let us get some more information about it. By whom was the Committee appointed?

(The Witness) The Committee was appointed by the Board of Education.

(The Court) Then what?

(The Witness) Well, I don't have the minutes of the meeting here, Your Honor, but as I recall it there was quite a bit of discussion prior to the appointment of the Committee, and the Board did take action on the appointment of the Committee to advise them on the problems of integrating the schools of Harford County.

I recall that the meeting -- do you want the names of it? Shall I go ahead?

(The Court) Yes. Did you meet with the Committee?

(The Witness) I was not supposed to. The Board felt that it would be better if I did not meet with the Committee; but they felt some member of our staff should meet with them and give them the information that they needed, but later I did, but the first one was attended by this member of our staff, our Assistant Superintendent, and he was also there for the second meeting, and I did attend that, and I had nothing to say, but I had no influence on them, and on several occasions I believe I was asked for information which I gave; I don't know what about.

(The Court) The Committee did this work through the Committees.

(The Witness) Yes.

(The Court) Was that fact reported to the School Board? Was that a matter of public knowledge?

(The Witness) Well, yes, I think it was public knowledge, and they had several committees because our office did some work for the committee,

(The Court) Supplied them with some information?

(The Witness) Yes, as they requested it, or asked a member of our staff, and we gave them a member of our staff who could work with them, although I didn't meet with the committee, I met with the chairman several times and gave the information on the facilities.

(The Court) Did the School Board know that you were working with the sub-committees?

(The Witness) I think they did, yes.

(The Court) Or your staff?

(The Witness) Yes, it was a matter of knowledge and were discussed at the meetings.

(The Court) Well, as I understand it these papers Mr. Greenberg has shown you are reports made by the sub-committee to the general committee. Were they made at that meeting which you attended?

(The Witness) Yes.

(The Court) The second meeting?

(The Witness) They were made at that meeting, yes, but as I recall there was no formal adoption of any of these reports. They were simply made, and that meeting had the sub-committee reports and the reports were made, and then the chairman made a report of what had been done elsewhere in the State, and the information was obtained for that just prior to that meeting, and as a result of these four things, I would say, they passed the Resolution which was written out and sent to the Board.

(The Court) May I see that? I haven't seen that yet.

(Mr. Greenberg) Yes (handing document to the Court).

(The Court) Are they separate or bound together?

(Mr. Greenberg) Some are bound and there are some that are separate.

(The Court) Well, you say that to the best of your recollection they were not adopted by the Committee as a whole?

(The Witness) I don't think so.

(The Court) At this time, Mr. Greenberg, I think that the papers might be marked for identification as Plaintiffs' Exhibit 1-A, B, C, and D, although perhaps they might be received in evidence at this time in order to show the fields of study covered by the sub-committees of the General Committee.

It may be that further evidence will make them admissible for other purposes, but I think that they should be so limited at this time.

By Mr. Greenberg:

Q. Have you read these reports? A. Yes, sir, I have.

Q. Are you familiar with the wording of the conclusion of the Sub-Committee on Facilities? Has that been reported to you in your capacity as Superintendent? A. I am aware of the report. It was never reported to me officially by any group.

Q. How did you get this? A. Our office served as secretary of this committee and I served for the whole committee, and all this, we did the paper work and sent out the letters.

Q. You administered the work of the committees? A. No, we didn't administer the work of the committees; we administered the secretarial work of the committee, would be the better way to put it.

Q. Did you personally have anything to do with this or some secretary in your office? A. I personally probably told which secretary to do it at the time. I don't know exactly. That would be the normal procedure.

I think my personal secretary did most of the typing. Just because we did the typing didn't make it our report.

(The Court) Secretarial work. Is that just stenographic service or what kind of work? Is that generally secretarial work?

(The Witness) I mean stenographic service. It was sent to us and we typed that up and mimeographed it and sent it back in quantities.

Q. (Mr. Greenberg) On September 22, 1955 did you write a letter to Mr. Harold G. Baker, who was a member of the Citizen Consultant Committee of the Sub-Committee on Facilities? A. I did, yes.

Q. In this letter did you transmit the appointment to Mr. Baker, this assignment? A. Yes.

Q. Did you transmit the assignment as appears there in your capacity as Superintendent of this, of Schools? A. Well, this was signed I guess because my custom is usually to sign my letters and I usually signed them in that way.

Mr. Volkart, who was Chairman of this Committee, sent me the requests to send out to the various Committee members, but since we are speaking of the matter you will notice that this letter here is from Mr. Volkart which came to me, and then this is the covering letter, because when we started they had these names on it, as for instance this report here when it was sent to these people had these names here on it, and when it was sent to any committee they had their names on that and then Mr. Volkart sent this out, this one here.

Q. You signed that letter? A. The first one here is mine, but this one here was the covering letter.

Q. But you signed that letter "Charles W. Willis, Superintendent of Schools"? A. But this here letter was the one telling them they were appointed.

Q. Then on August 15, 1955 did you send a letter to Mr. Harold G. Baker signed "Charles W. Willis, Superintendent of Schools"? A. Yes, that was normal, but do you mind if we go back so then I can tell you about this matter, the Board, when they considered accepting any names selected

the names from people of the various parts of the County, various communities whom they would like to have as members of this Consultant Committee, and each took a certain number of these names, each member of the Board — we have seven — and each took six or seven names of people and asked each person to become a member of the Consultant Committee, and they made personal contacts.

That was in the month of July, and the meeting of the Board at which that occurred was held June 30th; so the next meeting was the first Wednesday in August, Wednesday, but I don't recall the date, but between that time, between June 30th and the first Wednesday in August, the members of the Board asked these individuals if they would serve on the Sub-Committee, and before that August meeting they had the names of people who had accepted membership on this Committee.

Then I wrote all these people telling them they had been appointed and expressing appreciation for their willingness to serve, and told them when the first meeting would be, and I believe that is this letter that you just referred to.

Q. Was it one of your duties to execute policy decisions of the Board as the Superintendent of Schools? A. That is correct, yes.

Q. Well, how does it differ from the action you regularly took as Superintendent of Schools? A. I don't see it was any different in this case. It was transmitting a matter that had been taken up by the Board of Education and the Citizens Committee, and I agreed to serve with the Committee and wrote the letter.

Q. As Superintendent of Schools was it your duty to keep advised and abreast of the decisions and policies of the School Board so that you might properly execute them? A. Yes.

Q. Aren't these policies — policy decisions communicated to you in the ordinary course of your business? A. That is correct.

Q. And have these policy decisions been communicated to you in the ordinary course of your business as Superintendent of Schools? A. What in particular?

Q. I am referring to Exhibits 1-A, 1-B, and 1-C.

(The Court) They are not policies of the School Board.

(The Witness) They never went to the Board of Education.

(The Court) You say they were never transmitted to the Board of Education?

(The Witness) No, sir.

(The Court) I take it it was a part of his duties as Superintendent to be familiar with what was going on in the School Office in the County.

(Mr. Greenberg) Yes, sir, I understand, but as Superintendent of Schools these were all transmitted to him because it was his duty to receive these things, and here is information obtained by an official of the School System.

(The Court) I don't have any doubt, and I don't think there is any dispute about it, about the obtaining of these copies whether from the members of the Sub-Committee or from the Committee or the members themselves, it is the same thing, so I might be familiar with what was going on in my official capacity, taking a similar instance, but that does not make that the action of the School Board or the action of the Committee other than that they were the actions of the Sub-Committee.

(Mr. Barnes) That is correct.

(Mr. Greenberg) I want to offer this to show that this was transmitted to him in the ordinary course of business as Superintendent of Schools.

(Mr. Barnes) Well, I don't think it is and I object to that.

(The Court) I think Mr. Barnes is aware that certainly the School Board had knowledge of the fact that these steps

had been made by the Sub-Committee, and I think they are admissible in evidence to show what the Sub-Committee had considered, and the School Board knew at the time that these reports had not been adopted, or so far as I know repudiated by the Board, and for that limited purpose I think they may be offered.

The question is what relevancy or materiality they may have.

Now, their competency in effect is that they are reports of the Sub-Committee, not adopted by the General Committee, and they came to the attention of the Superintendent of Schools in the course of duty, which presumably were matters of common knowledge in Harford County.

Now, I think that shows what their competency is. Now, whether they are relevant to any issue in this case or what their materiality is, is another matter, and I suppose that can only be determined when all of the evidence is in, so I think they might be received in evidence for that limited purpose at this time.

(The Witness) May I say something?

(The Court) Yes.

(The Witness) I don't want to say in the record that the Board didn't know about any of them. I am not sure whether the Board got this complete one on facilities or whether they just got part of it, or the data, it was probably studied and tied in closely with some plans we had for future construction. So I do think they had part of this, but whether they had the whole thing, I am not certain.

(The Court) Do you know whether that report was available to the members of the School Board?

(The Witness) Yes, it was available. We usually route these at the meeting, and whether I did that with the whole report or part, I could not say, but the other two weren't.

(The Court) 1-A was.

(The Witness) Yes.

(The Court) This on facilities, which is 1-A, that was available to the School Board?

(The Witness) Yes.

(The Court) For a matter of discussion?

(The Witness) Yes.

(The Court) And the other reports were available to the School Board if they wanted to read them, but you don't know whether they did or not?

(The Witness) I don't know definitely.

(The Court) Well, they weren't kept secret?

(The Witness) They weren't kept secret, no.

(Mr. Barnes) The President of the School Board is here and we expect to offer him.

(The Court) I will draw any inferences after I have heard all the evidence.

Q. (Mr. Greenberg) The Sub-Committee reports made a detailed study on facilities in Harford County Schools? A. That is correct.

Q. Are you aware of the conclusion of the Sub-Committee on Facilities? A. I have read the whole report, yes.

Q. Was that conclusion reported to you? A. I don't recall about the conclusion.

Q. This conclusion on page 4 of Exhibit 1-A? A. That is correct.

* * * * * *

(R. 83-91):

By Mr. Barnes:

Q. Now, Mr. Willis, are you familiar with the opinion of the Attorney General of Maryland of June 20, 1955 to Dr. Pullen with respect to the effect of the decision of the Supreme Court of the United States in Brown v. Board of Education of Topeka, 349 U. S. 294 on the laws of Maryland

requiring and permitting segregation of the races in the public school system of Maryland? I think that appears as Defendants' Exhibit 8? A. Yes, I was, I am.

Q. Are you familiar with the resolution of the State Board of Education and others dated June 22, 1955 which has been introduced as Defendants' Exhibit 9? A. I am, yes.

Q. And is the Board of Education of Harford County familiar with both of these Defendants Exhibits 8 and 9? A. Yes.

Q. What do you understand was the effect of the opinion of the Attorney General and the Resolution of the State Board of Education upon the laws of Maryland requiring or permitting segregation of races in the Public School System of Maryland? A. I understand that the laws became null and void.

Q. Did the Board have the same understanding? A. I think they did, yes.

Q. Do you or the Board have any intention not to comply with the resolution of the State Board of Education of June 22, 1955? A. No, sir, we do not.

Q. Now, what actions did the Board of Education of Harford County take pursuant to that resolution of the State Board of Education of June 22, 1955? What actions did you take pursuant to that resolution? Just in chronological order. Take June 30th, 1955. A. June 30th, 1955, the Board held the regular July meeting at my request.

Q. The July meeting was what? A. The regular July meeting it was, I had to leave to go to summer school on this work that I just mentioned, and I requested the Board to do this, you understand.

(The Court) I have had some experience with school boards.

(The Witness) And they did this, and that is the reason the July meeting was held in June, which is unusual, and that is the reason.

So that my main purpose was to select, select the Citizens Committee to advise the Board on the problem of desegregation of the schools of Harford County.

I might point out this was just eight days after the letter from Dr. Pullen that you just mentioned, which was June 22d.

However, prior to this meeting I had asked the principals of most of our schools, at least all of the larger ones to give me a list of people in their communities whom they thought would make good members of this Committee. I had probably ten or fifteen such lists, and in addition to that I had a list of 247 people I usually thought of as friends of the schools in the different communities of our County, and I might say there was some duplication between the individual lists and my lists, and we had studied this to make a good selection, I think for a least a couple of hours, and at the end of that time we decided on the size of the Committee, and each member of the Board had taken a list of the people in their areas whom they thought they could contact personally and ask to became members of this Committee, and they took the list for this purpose and they came back, that came back and they were given to me, which was the regular next meeting, after they had accepted appointment, which was done.

Then the next meeting was held August 6th, and after the August 6th meeting I sent a letter to all the members of these Committees for their acceptance.

Q. (Mr. Barnes) How many members were there on the Committee? A. Thirty-six.

Q. Who was appointed chairman for the Committee? A. Mr. Ernest Volkart.

Q. Were there any Negroes on the Committee? A. Yes, five.

Q. Out of the thirty-six? A. Yes. They were presidents of Parent-Teachers Association, head of a national association for the Protection of Colored People, people from

various sections of the County, a Doctor from Havre de Grace, and I was the only one that had any official capacity.

Q. What happened next? When did this Committee report? A. I might mention this that after the August 6th meeting letters were sent out telling them of their appointment, indicating the time of the first meeting would be August 15th.

They held that first meeting which I didn't attend, and Mr. Harry, President of the Board was in the building, just inside the building, but weren't in the meeting where they could see me.

Q. Was that done deliberately? You didn't attend deliberately? A. I didn't attend deliberately, nor did, Mr. Harry didn't attend. We also agreed that I went up to the meeting, and then as a result of that meeting four Sub-Committees were appointed by the chairman.

These Sub-Committees were on Facilities, Transportation, Social Relationships, and Public Opinion.

The Public Opinion Committee didn't meet, so therefore there is no report from that group.

Now, these Committees were directed to gather their evidence and inform the chairman when they were ready to make a report, and each Committee had a member of my staff, as for example Facilities, to gather information and I personally served with them because I was the only person on my staff who was familiar with the enrollment problems, and that was the procedure.

Then these sub-committees apparently reported to the President some time — or the chairman, Mr. Volkart, some time in February that they were ready to report; so the meeting of the full Committee was held on February 22d, and where I mentioned the member of my staff, the member we had the first time was ill and in the hospital, so I went, I went to this meeting.

I didn't offer any opinion, although I was asked for information in one or two respects. I don't recall what they were.

At that meeting the Sub-Committee chairman gave the reports, and the chairman gave their report of what was being done elsewhere in the State of Maryland, and as a result of this plus some discussion of what had occurred the resolution was made, and I believe, unanimously passed. That was the end of the meeting.

Mr. Volkart, the chairman, sent that resolution to the Board of Education as the final report of the Committee, and that was a six-page resolution, I think, the original with Mr. Volkart's signature on it.

Q. That is the one that appears as Defendants' Exhibit 10? A. Yes.

Q. Then what did the Board do with respect to the resolution of February 27th? What did it do? A. On March 7th at the regular meeting of the Board, the Board approved the adopted resolution that was passed by the Citizens Committee.

Q. What was the next step that the Board took? A. On June 6th the Board approved the plan for requesting transfers and so advertised in all the papers in the County. I think you made a statement it was in the Aegis.

Q. And other papers? A. Yes. We have four papers and we had advertisements in all four of them.

Q. You advertised in all papers? A. Yes.

Q. That has been put in evidence as Defendants' Exhibit No. 2, Your Honor.

Now, pursuant to that advertising, you had how many applications? Fifty-nine applications were— A. Yes.

Q. And there was one— A. One was a mistake by my secretary.

(Mr. Barnes) Not sixty.

Q. (Mr. Barnes) You granted fifteen? A. Yes.

Q. And rejected forty-five? A. Yes.

Q. On August the 1st, what did the Board do? What happened next? A. The Board adopted the policy, the so-called Desegregation Policy.

Q. Which appears as Defendants' Exhibit No. 3? A. Yes.

Q. Thereafter on August the 7th, 1956 did you write letters to the forty-five persons or parents of the forty-five applicants who had been denied, rejecting or denying those applications? A. That is correct, and with that letter we enclosed a copy of this policy.

Q. That is the Desegregation Policy of August 1st, 1956? A. Yes.

Q. And those letters include the four letters to Mr. and Mrs. Moore, Mr. and Mrs. Spriggs, Mrs. Slade, and Mr. Garland? A. Yes.

Q. Which were offered as Defendants' Exhibits 4, 5, 6, and 7? A. Yes.

Q. Now, Mr. Willis, did you understand that in promulgating the transfer policy of June 6, 1956 and the Desegregation policy of August 1st, 1956 you were carrying out the resolution of the Board adopted on March 7th, 1956? A. Yes, sir.

Q. And did the Board have the same understanding? A. Yes.

Q. Why do you say that? A. The Board in the State resolution, when that first came in felt that it was so broad a resolution it did not give them any authority to exercise what they thought was their best determination in the case, and they wanted to do what was the best thing, and they wanted to work it out under the regulations that would work in the light of what had been going on in Delaware, and the Board has been very cognizant of this problem for about two years, and when you look over the minutes, and I went through them once with one of the attorneys for

the plaintiff and pointed out all references to this problem of desegregation, the minutes of our meetings, and in our discussions trying to figure out a way to try to be uniform as to the best way to handle this problem.

* * * * * *

(R. 93-95):

Q. (Mr. Barnes) Do you believe that you and the Board have made a reasonable start in good faith to carry forward the integration of the public schools in Harford County? A. Yes.

Q. As far as you know, have the plaintiffs taken an appeal from your decision of August 7th, 1956 to the State Board of Education? A. I don't know of any.

Q. You don't know of any such appeal? A. No.

Q. If an appeal had been taken, you would know about it? A. Yes, sir, I think so.

(The Court) Can it be stipulated that there has been no appeal to the State Board of Education?

(Mr. Dearing) No appeal has been taken to the Board, no, to the State Board, no.

Q. (Mr. Barnes) Has the desegregation plan been accepted generally by the citizens of Harford County? A. Yes, sir, and I might state for the record that some of the people who most rabidly were against it have complimented us for the beginnings that we have made.

Q. Do you intend to continue the integration of additional grades in the public schools of Harford County based upon the experience obtained by this first year of operation under the plan? A. Yes. It is so stated in the policy.

Q. At the present time do you see any reason why there should not be further integration for the school year 1957-1958?

(The Court) He says that it is so stated in the policy, and I want to know to what he is referring?

(Mr. Barnes) That is the Desegregation Policy—

(The Witness) Of August 1st.

(The Court) Has the Board adopted any more specific plans of desegregation than as stated in the August 1st policy?

(The Witness) No, Your Honor, but we feel that for the next couple of months that in view of the plan that has been worked out and the steps taken that we have been successful to date.

* * * * * *

(R. 96-97):

(Mr. Barnes) Yes.

Q. (Mr. Barnes) Do you consider that you and the Board of Education of Harford County have made a reasonable start toward the complete integration of the schools of Harford County in a reasonable time and with deliberate speed and that this will be accomplished in a gradual and orderly manner? A. Yes.

(The Court) Well, I haven't heard Mr. Willis' good faith questioned.

Q. (Mr. Barnes) Are you relying on any state law, statute, order regulation, custom or usage which purports to require or permit continued segregation of the races in the public schools of Harford County? A. No, sir.

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(R. 100-105):

(The Court) What is the school set-up in Harford County?

(The Witness) It is a six-three-three system.

(The Court) This is applying for what grade?

(The Witness) He would be in the Junior High School.

(The Court) There is a Junior?

(The Witness) There is a Junior and Senior High School there.

(The Court) His application is put under Junior-Senior High School for the lowest grade in that school?

(The Witness) That is correct.

(Mr. Greenberg) Rosalind Slade and Patricia Garland both live in Aberdeen, and they must travel six miles to the Hall Cross Roads School, and they desire to transfer to the Aberdeen High School in Aberdeen.

(The Court) What grade?

(Mr. Greenberg) That is the ninth and eleventh grades. They want to transfer to the Havre de Grace High School, rather.

(The Court) That would be the third year Junior High and the second year High School?

(The Witness) Yes.

Your Honor, may I make one correction?

(The Court) Yes.

(The Witness) The first one, the Moore children do not live fifteen miles from the school, but they live right in Bel Air, so it would only be three miles from the school to Hickory, not fifteen.

(Mr. Dearing) That is true.

(The Court) All right. Three miles, Let's get that on the map. Just mark the location of the Central Consolidated School at Hickory.

(The Witness) Yes.

(The Court) Well, do they walk from here, or is there transportation?

(The Witness) There is transportation, yes (referring to map).

(The Court) Do you provide transportation from children living in Bel Air to the Bel Air High School?

(The Witness) No, sir, we don't.

(The Court) Do you provide transportation from children living in Bel Air to the Central Consolidated School in Hickory?

(The Witness) Yes.

(The Court) Do you provide transportation from children living in Edgewood to the Edgewood High School?

(The Witness) Yes, some.

(The Court) And some walk?

(The Witness) Some walk, yes.

(The Court) And do you provide transportation from Edgewood to the Hickory Consolidated School?

(The Witness) Yes.

(The Court) And do you provide transportation from people living in the Chesapeake — is it?

(The Witness) Gardens.

(The Court) Chesapeake Gardens on the Aberdeen Proving Grounds to the Aberdeen High School?

(The Witness) Yes, we provide transportation.

(The Court) And you also provide transportation to the Havre de Grace Consolidated School?

(The Witness) Yes.

(Mr. Barnes) I just want to ask a question here.

By Mr. Barnes:

Q. Is this transportation provided free of charge? A. Yes, it is free.

Q. And is the transportation the same regardless of whether the person is white or colored? A. Yes, it's all the same.

(The Court) There is no question of inequality of facilities, as I understand it.

Do I understand you to say in the high schools you consider the Bel Air High Schools to be overcrowded or to have lack of facilities?

(The Witness) That's right.

(The Court) Is there any restriction on white children attending the Bel Air High School?

(The Witness) No, sir, but we have a situation that I might say that in the past the children from the Edgewood area have gone to the Bel Air High School, and it has gotten so overcrowded that we several years ago built a new high school in Edgewood, and allowed those in the Senior High School to finish in Bel Air, and we are cutting those each year, and this year we have a senior class that will be the last senior class to go there, and the last one from the Edgewood area to go to Bel Air, and next year the Edgewood School will become a full high school, and started with the Junior High School to let the children go there.

(The Court) Are children in Harford County required to attend the nearest school or are they permitted to attend a school of their choice, taking white children?

(The Witness) In general it is this, they are required to attend a school in their area, and the bus routes make some difference. We have a great transportation problem.

(The Court) Because of distances you normally wish them to attend a school in their area?

(The Witness) Yes, because bus transportation is available and you don't make bus transportation available on an erratic course.

(The Court) There are some places where there is a complete school where they come practically to the same point.

Are there any restrictions on a white child who wishes to attend the Bel Air High School, any restrictions placed upon such a child?

(The Witness) Yes, we wouldn't let him go from Havre de Grace to the Bel Air High School. I don't know that we have had such a request.

(The Court) But it is sufficiently crowded that you do make some restrictions?

(The Witness) Yes.

(The Court) On white children.

(The Witness) Yes.

(The Court) Attending?

(The Witness) Yes.

(The Court) Now, what about the Edgewood High School? Is that the new school being built?

(The Witness) No, it has been in use. I think this is the third year, Your Honor.

(The Court) Are the facilities there overcrowded?

(The Witness) At the present time we are planning an addition to them, yes.

(The Court) Well, what restrictions, if any, are there on children attending the Edgewood High School?

(The Witness) I don't know of any restrictions.

(The Court) Is the Aberdeen High School overcrowded?

(The Witness) No, sir, it is not.

(The Court) Is the Bel Air Elementary School overcrowded?

(The Witness) It is probably the most overcrowded school we have. We are planning to build a twenty-four room Elementary School in another location in Bel Air next year.

* * * * * *

(R. 111-112):

(The Court) Is the Edgewood High School any more overcrowded than the Hickory Consolidated School?

(The Witness) I don't think so. I think they are probably about the same.

(The Court) The other three were a matter of policy?

(The Witness) Yes.

By Mr. Greenberg:

Q. This standard that you have mentioned, that is a national standard? A. That is correct.

Q. What is the standard of the State of Maryland? A. The same.

Q. Identically the same? A. Yes.

(The Court) It is an ideal which is by no means achieved. I think that most of us know that we have done our best to achieve that, but I think the general average in Maryland runs considerably above that, doesn't it?

(The Witness) Yes, especially places like Baltimore County and Prince George's County, and ours to some extent.

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(R. 112-120):

DAVID G. HARRY,

was called as a witness for and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

(The Clerk) State your full name.

(The Witness) David G. Harry.

DIRECT EXAMINATION

By Mr. Barnes:

Q. What is your occupation, Mr. Harry? A. Farmer.

Q. What position do you have with the Board of Education of Harford County? A. I am President of the Board.

Q. Are you familiar with the opinion of the Attorney General of Maryland, June 20, 1955 to Dr. Thomas G. Pullen with regard to the effect of the decision of the Supreme Court of the United States in Brown v. Board of Education on the laws of Maryland requiring or permitting segregation of the races in the public school system of Maryland? A. I am.

Q. And are you familiar with the resolution of the State Board of Education of June 22, 1955, which is Defendants' Exhibit No. 9? A. I am.

Q. And you are President of the Board of Education? A. Yes.

Q. What do you understand was the effect of the opinion of the Attorney General and the resolution of the State Board of Education upon the laws of Maryland requiring or permitting the segregation of races in the public school system of Maryland? A. That made the laws of Maryland null and void.

Q. Did the Board have the same understanding? All members of the Board? A. Yes.

Q. Does the Board have any intention not to comply with the resolution of the State Board of Education of June 22, 1955? A. They do not.

Q. Do you understand that in promulgating the "Transfer Policy" of June 6, 1956 and the "Desegregation Policy" of August 1st, 1956, you were carrying out the resolution of the Board adopted March 7th, 1956? A. I did.

Q. You heard the testimony of Mr. Willis in this case, have you not? A. Yes.

Q. Is his testimony as you heard it substantially correct? A. It is.

Q. Do you believe that the Board of Education of Harford County has made a reasonable start in good faith to carry forward the integration policy in the public schools in Harford County? A. I do.

Q. Do you consider the plan which the Board of Education of Harford County has adopted to be successful thus far? A. I do, yes, very successful thus far.

Q. Does your Board intend to continue the integration of additional grades in the public schools of Harford County based upon the experience obtained by this first year of operation under the plan? A. That has been discussed informally among the members, yes, and it will be continued and enlarged upon.

Q. Do you consider that the Board of Education of Harford County has made a reasonable start toward completing the integration of the schools of Harford County within a reasonable time and with deliberate speed? A. I do, yes.

Q. And is it your opinion that this will be accomplished in a gradual and orderly manner? A. Yes, it is.

CROSS EXAMINATION

By Mr. Watts:

Q. Mr. Harry, do you recall how many groups appeared, groups with respect to integration of schools in Harford County? A. You said what?

Q. Do you know how many groups? A. Before the Board?

Q. Yes. A. I would say perhaps three. That is to the best of my recollection, were opposed to integration at all, perhaps two in favor.

Q. Isn't it also true that even as early as 1954 certain groups did appear before such Board asking that steps be taken to— A. That is correct.

Q. And isn't it true that the School Board also refused to bring in the P-T-A and interested people in the community in 1954? A. That was requested, yes.

Q. You said before that this decision of August 1st was an attempt to carry out the resolution as adopted by the Board on March 7, and in that March 7th resolution it stated

"any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child." Are you telling His Honor and this Court that August 1st on which the first three grades were to be admitted was in accordance with the resolution of March 7th?

(Mr. Barnes) Well, Your Honor, I object to that question.

(The Court) Well, he answered your question without hesitation which was pretty broad.

(Mr. Barnes) Very well, sir.

Q. (Mr. Watts) Mr. Harry, are you familiar with the decision of this Court in the case of St. Mary's County? A. I haven't read it.

(The Court) Well, you can ask him whether h' is familiar with it.

(Mr. Watts) I assume he was familiar with it.

Q. (Mr. Watts) Was the Board of Education of Harford County in any way influenced by the decision of Judge Thomsen in that case? A. They were not.

Q. That came between March 7th and August 1st? A. I was handed just last week a reference to this and that is the only way I know I am familiar with it but that in no way influenced any decision.

Q. It was not discussed? A. No.

Q. Was your counsel present at your August 1st meeting? A. He was not.

Q. Did he have any discussion with you or any member of the School Board from say July 24th up until— A. No.

Q. A month before the August 1st decision? A. No.

Q. Mr. Harry, Mr. Willis said your Board considered the difficulty that was encountered in Delaware and somewhere else. Did your Board also take into consideration in formulating the August 1st policy the experience of places closer, and I have reference to, say, Montgomery County or Balti-

more City or Baltimore County in which the plan was working successfully without difficulty? A. I think in our discussions that perhaps those cases were mentioned at different times and has been a subject for the Board to consider for the past year and a half or two years, and any instances were probably brought up, but when we actually discussed and formulated the policy, they were not, they were not a part of the discussion to my knowledge.

Q. Mr. Willis said that it was felt by the Board that the first three grades, which was a sensitive area in which you might encounter difficulty, that is what I had reference to, the fact that you limited it to the first three grades, did you consider that the reason might be you might have some trouble and that was the basis for it? A. You asked me how many groups came before the Board and I had many groups and many individuals came to me personally against integration. I had no one come to me for integration personally.

Q. Were you influenced by the fact that persons were against it in any way? A. I would say no more so than I was influenced by any other group that I heard of as a member of the Board.

Q. Most of these people were against the decision, weren't they? A. A good many of them were.

Q. Mr. Willis said that in a case where the facilities were available and he said he felt that it was sensitive, and so he refused, but I just wondered, wanted to ask you whether any steps were taken by your Board in these rural areas to allay this difficulty in sensitive people? A. I don't think we had time because that was in September 1956 and this is only November 1956 and I don't think we have had time, to make sure that we are making progress to a degree where we could put a child in.

Q. Well, you were asked to do this and you refused to do it? A. We were asked to take one child in September 1955.

Q. You were asked to bring the P-T-A together? A. Well, you also asked us to take one child, in September,

and we refused because the Court had not come out with a decision.

Q. Didn't we also ask you rather than wait for a decision because you say you didn't have time, didn't we ask you to see that certain steps were taken to bring the parties together? A. Yes.

* * * * * *

(R. 122-125):

ERNEST VOLKART,

was called as a witness for and on behalf of the defendants and, having been first duly sworn, was examined and testified as follows:

(The Clerk) Your name is Ernest Volkart?

(The Witness) Yes.

DIRECT EXAMINATION

By Mr. Barnes:

Q. Mr. Volkart, what is your occupation? A. I am a lawyer.

(The Court) And he is a member of the judicial family of this Court.

(Mr. Barnes) Thank you.

Q. (Mr. Barnes) You are United States Commissioner, aren't you? A. Yes.

Q. Were you appointed Chairman of the Citizens Consultant Committee by the Board of Education of Harford County on August 6th, 1956? A. Yes.

Q. How many members were there on that Committee? A. The Citizens Committee?

Q. Yes. A. Thirty-six including myself.

Q. Were there any colored members? A. Five.

Q. And after the Citizens Committee was appointed, what did it do? A. At the first meeting, sub-committees

were appointed, one on Facilities, one on Recreation, one on Transportation, and one to make a survey of public opinion.

Some members of the Committee were in touch with me between the time of appointment in the early part of September 1955 until the final meeting in February of 1956.

Q. Were there sub-chairmen of these committees appointed? A. Yes, sir.

Q. Now, I think you mentioned the meeting of February 27th, 1956. Tell us what happened at that meeting, and what the resolution of the Board was. A. That was the meeting of the sub-committee. The reports were read. The Committee on Public Opinion did not make any report. After they were read and were discussed, the resolution that has been introduced was prepared by me and submitted to the membership of the Citizens Committee and unanimously adopted.

Q. What is your understanding of the practical effect of that resolution of February 27th, 1956, Mr. Volkart? A. The practical effect, as the Committee and I understood it, was that the change which had taken place under the Supreme Court ruling would have to be in a measure gradual and that the Citizens Committee could not prescribe any specific pattern, and that the resolution speaks for itself in that the School Board must make rules and regulations to integrate the schools gradually and consistent with the best interests of our citizens of Harford County.

Q. And were the recommendations of the various sub-committees adopted by the full committtee? A. They were not.

Q. Are you familiar with the Transfer Policy of the Board of June 6th, 1956 and the Desegregation Policy of the Board of August 1st, 1956? A. I have read them in our County papers.

Q. Do you consider that these actions of the Board are consistent with and in furtherance of the resolution of the Citizens Committee of February 27th, 1956? A. I think so.

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(R. 140-152): Thursday, April 18, 1957

CHARLES W. WILLIS,

a witness previously called for and on behalf of the defendants resumed the witness-stand and testified further as follows:

DIRECT EXAMINATION

(The Court) How many white high schools are there?

(The Witness) You counted the two Consolidated Schools.

We have one white high school at Bel Air. That's six years. All of these are six years.

We have one at what we call North Harford. That is a consolidated area in the northern part of the county. We have one at Aberdeen which has the sixth grade in the elementary school, that is. That is, it has a sixth grade in addition to the regular high school grades.

(The Court) Well, I wanted to get that. Is the sixth grade of the Aberdeen School considered a part of that school or is it considered a part of the elementary school that you just mentioned, or is it just a temporary arrangement?

(The Witness) It is just a temporary arrangement, Your Honor. We over-built that school, and it was easier to over-build that than any of our elementary schools, to take care of those immediately, but we will need it for our high schools in several years, and by that time we hope to have another elementary school.

(The Court) But that sixth grade is administered as a part of the high school?

(The Witness) Yes, at the present time.

(The Court) So that children transferred to that—

(The Witness) If they transferred to that grade, it would be in the elementary. We consider it an elementary grade, yes.

(The Court) It is a difficult problem on what is a transfer and what is not.

(The Witness) Yes.

(The Court) That is one of the things I had some difficulty with in understanding your plan.

(The Witness) Yes.

(The Court) I understand that if a child in the third grade would normally go to the fourth grade in the same school that he is in, but if he wants to go to another school, that is a transfer.

(The Witness) Yes.

(The Court) Now, do you consider going from — let's take Bel Air where you don't have this sixth grade problem — does a white child who graduates from the elementary school in Bel Air and goes to the junior high school in Bel Air, is that considered as a transfer or is that considered as entering a new curriculum or any intermediate level?

(The Witness) We never thought of it in terms of transfer, no, sir.

(The Court) And what about going from the junior high into the senior high?

(The Witness) The same thing. In our case it's very simple because they don't even go to a different school. All their junior high grades are in the senior high school.

(The Court) Well, if a white child, having completed junior high school at Bel Air, wished for some reason, if his family moved, or for some other reason, to go to the North Harford School, for senior high or vice versa—

(The Witness) Yes.

(The Court) Would that be considered a transfer?

(The Witness) No, sir. Well, we don't allow that because we have to keep our school facilities in line, and he wouldn't be allowed to go up there unless he lived there.

(The Court) You mean children are required to attend schools in the area in which they live?

(The Witness) Which has been established for them.

(The Court) Which has been established?

(The Witness) Yes.

(The Court) I think there was some testimony that you practically never have any request from white children to go to any other schools or to be transferred?

(The Witness) Maybe one or two a year; nothing to amount to anything because the policy has been well established over a period of years.

(The Court) Are those transfers that you have for white children based upon their families having moved from one area to another or based upon some other reason?

(The Witness) Well, usually it would be a problem like this, if I may state it specifically—

(The Court) Yes, because I want to get the picture.

(The Witness) I think I can give you one case which I think will explain it. We have two little girls that went to Bel Air all their lives up to about the ninth or tenth grade, and their families then moved to Aberdeen.

Now, they had all their associations in Bel Air and they wanted to drive back and forth and go to Bel Air and continue there; but that was outside of our policy, and we don't think it is proper to allow that to happen in that case, so they were told to go back to Aberdeen, which they did, and then a month or so I happened to see them and speak to them, and they were satisfied with things where they were.

(The Court) You have bus routes?

(The Witness) Yes.

(The Court) And the children are picked up on those bus routes and taken to a particular school?

(The Witness) Yes.

(The Court) And you provide no transportation to any school other than the one—

(The Witness) That is correct.

(The Court) — covered by that route.

(The Witness) Except in some cases where the buses will run together, we might have a little bit of overlapping.

(The Court) There is some occasional overlapping?

(The Witness) Yes.

(The Court) But practically you have never set up any policy for transferring white children?

(The Witness) That is correct.

(The Court) Because it doesn't really exist, and each one is treated on a separate basis?

(The Witness) Yes. If they move after the end of the first semester and they wish to continue in the school, we allow that.

(The Court) But the parents have to take care of the transportation?

(The Witness) They have to take care of the transportation.

(The Court) Now, tell me about the other high schools. Bel Air, Harford, and Aberdeen.

(The Witness) Havre de Grace High School. That is the sixth grade.

The other one would be the Edgewood High School, and this is a little bit of a different situation. We thought of growing into that school, and we do not have a senior year at the present time, and it has six grades in it. It has six elementary grades, seven, eight, nine, junior high school, and ten and eleven senior high schools. But next year it will be a full senior high school.

We will have to keep the sixth grade there next year, but we hope to do some building that will take care of that in another year.

(The Court) Now, that's the high schools.

How many elementary schools are there — and I want to divide them into four groups, and maybe we will have to subdivide them.

There are two elementary schools in which Negro children were admitted to the first three grades this past year.

(The Witness) Yes, sir.

(The Court) Now, what schools are those?

(The Witness) They are Edgewood Elementary School in Edgewood, and Halls Cross Roads Elementary School, which is in Aberdeen, Aberdeen, near the entrance to Aberdeen Proving Grounds.

(The Court) They are the ones, the first three grades in the fall of 1956?

(The Witness) That is correct.

(The Court) Now, there were two other schools which were not overcrowded but to which you did not admit any children. Which were those schools?

(The Witness) One was — Darlington was one, and I think the other one was Perryman near Aberdeen, a two-room school.

(The Court) You have no application for one of them, but you have one application for the other?

(The Witness) One application for Darlington, and none for Perryman.

Now, Judge, Your Honor, there was another school that we haven't considered in this, probably inadvertently maybe because it had no colored children living in that area at all, and that's the one that caused some comment after the other meeting, so I would like to bring that out.

(The Court) Which school is that?

(The Witness) That is one we call our Slate Ridge School up along the Pennsylvania line. Last spring — I don't know about now — but there were no colored families at all in the school area.

(The Court) Well, there were no applications for that.

(The Witness) No applications for that, Your Honor, no, but that is the one that caused some comment.

(The Court) Now, of course, the child who applied for Darlington, with respect to that one, I understand that there was no administrative reason for not admitting that child to Darlington, but you refused to admit that child to Darlington as a matter of social policy or judgment as to how fast the plan should be put into effect; is that right?

(The Witness) I think that's correct.

(The Court) Or substantially that.

(The Witness) Yes.

(The Court) I haven't read the testimony, but I don't understand that any contention is made for any other reason at Darlington.

Now, there are other schools which you claim were overcrowded in 1956 but to which you proposed to admit students in the fall of 1957.

Now, what are those elementary schools?

(The Witness) Well, one would be Emmorton.

(The Court) Emmorton?

(The Witness) Yes.

(The Court) All right.

(The Witness) Another one would be the Aberdeen Elementary School. Another one would be the Youth Benefit Elementary School.

(The Court) Youth Benefit?

(The Witness) Yes, Youth Benefit School.

(The Court) Y-o-u-t-h?

(The Witness) Yes.

Churchville. Slate Ridge, of course, would be in that category.

(The Court) Well, I have that.

(The Witness) You have that. I don't know whether anyone lives in that area or not.

(The Court) Well, let's put Slate Ridge in there.

(The Witness) Because it really is in there.

(The Court) Let's put it in this one and take it out of the other because we only talked about two last year, and I think we better keep those two which were the ones that were discussed in connection with the policy, and we will put Slate Ridge in one that will be in 1957. It doesn't make much difference because there were no applications.

Now, what else?

(The Witness) Another one is Darlington.

(The Court) Well, Darlington is already in the non-overcrowded.

Do you propose to admit them to Darlington this year?

(The Witness) Yes.

(The Court) And they would be added to this list?

(The Witness) Yes.

Do you propose to admit them to Darlington this year?

(The Witness) Yes.

(The Court) And they would be added to this list?

(The Witness) Yes.

(The Court) And these are additional ones?

(The Witness) Yes. The other one would be Havre de Grace, which includes a special school which is an annex down there.

(The Court) Is that all the schools to which they will be admitted?

(The Witness) How many do you have on your list?

(The Court) I have seven.

(Mr. Barnes) Seven.

(The Witness) Seven.

(The Court) I have six new ones and four old ones.

(The Witness) That would be ten.

(The Witness) That would be ten. That is, Edgewood, Halls Cross Roads, Darlington, Perryman. That is four.

And then Emmorton, Aberdeen, Youth Benefit, Churchville, Slate Ridge and Havre de Grace.

(The Witness) The sixth grade, considering this policy of the Board, the Board considered all elementary grades, so they also included in this the sixth grade in the Aberdeen High School.

(The Court) The Aberdeen High School, and the sixth grade.

(The Witness) Yes, in the Aberdeen High School, which we operate as part of the Elementary School. We have a separate administrative set-up for it.

(The Court) All right. Aberdeen Elementary including the sixth grade at Aberdeen High.

(The Witness) Yes, sir. That makes one more.

(The Court) Does it include the sixth grade at the Edgewood School?

(The Witness) No, sir, because that school is considerably overcrowded, the building is overcrowded.

(The Court) So that the Edgewood Elementary does not include the sixth grade at Edgewood High School.

Now, how many schools are you excepting from your plan for the fall of 1957?

(The Witness) Seven.

(The Court) What are they?

(The Witness) Old Post Road, which is twenty-four percent overcrowded, over-capacity on February 1st.

(The Court) Old Post Road, twenty-four percent?

(The Witness) Yes, over-capacity on February 1st.

(The Court) Now, when you say "over-capacity" you are dividing what by what?

(The Witness) Well, we are taking the number of rooms and multiplying by thirty, the number of class rooms and multiplying by thirty, and that would be the capacity.

The number of children there would be the difference between that, or the number of children would give you the number of children of the percentage over.

(The Court) Old Post Road, twenty-four percent overcrowded.

(The Witness) Yes.

(The Court) February 1957.

(The Witness) These are all February 1st figures.

The Edgewood sixth grade, which is housed in the Edgewood High School, which was twelve percent overcrowded as of that date.

Now, that school will be considerably more overcrowded this year because we will hold every child that is there and bring in another sixth grade.

(The Court) There will be one additional grade.

(The Witness) Yes, so that will increase the capacity much more than it is, increase the number of children much more than it is at the present time.

The next exclusion is Forest Hill, which was seventeen percent overcrowded at that time.

(The Court) All right.

(The Witness) Bel Air, which was fourteen percent overcrowded; Jarrettsville which was just a little over ten percent; Dublin which is sixteen percent — excuse me, that would be Highland which is sixteen percent. Dublin would be fourteen.

(The Court) All right. Dublin would be fourteen.

(The Witness) Highland would be sixteen.

That's seven, I believe.

(The Court) That makes eighteen elementary if you include the two sixth grades.

(The Witness) Yes. That would be eleven and seven.

Your Honor, I might mention something here that you probably would like to know and that is in thinking of it last year, the Board considered the capacity on thirty pupils. This year they considered overcrowding as a ten percent overage as of a certain date and these figures would tend to be five to ten percent higher in September.

* * * * * *

(R. 235): Tuesday, June 11, 1957

(Mrs. Mitchell) Your Honor, there has just been received this last resolution, and it is the first knowledge we have received of any action of the Board of Education of Harford County, and we would like to have the opportunity to go over the contents of the resolution which was enacted on June 5, 1957, because we have not had an opportunity to confer about it.

(The Court) Well, a copy was given to me about five minutes ago; so we are in about the same situation.

(Mr. Barnes) I may say that I called counsel yesterday afternoon, but unfortunately neither of them were in their office, and I did call Mr. Dearing this morning early to see if the plaintiffs had gotten a copy by mail.

* * * * * *

(R. 249-250):

CHARLES W. WILLIS,

a witness previously called for and on behalf of the defendants resumed the witness-stand and testified further as follows:

DIRECT EXAMINATION

By Mr. Barnes:

Q. Mr. Willis, it has already appeared in the evidence that you are Superintendent of Schools of Harford County? A. Yes.

Q. And you testified in the hearing before His Honor on April 18th, 1957, did you not? A. Yes.

* * * * * *

(R. 251-254):

Q. (Mr. Barnes) Now, Mr. Willis, I show you a document entitled "Excerpt from the Minutes of the Regular May Meeting of the Board of Education of Harford County" dated May 1st, 1957. Are you familiar with that excerpt from the minutes? A. I am, yes.

(Mr. Barnes) I would like to offer this in evidence.

Q. (Mr. Barnes) Let me ask you this: At the time of this meeting, was there a quorum of the Board present? A. Yes, there was.

Q. And this was duly passed as a resolution of the Board of Education of Harford County? A. Yes.

(Mr. Barnes) I would like to offer this in evidence as Defendants' Exhibit 14.

(Mr. Greenberg) I don't believe I have a copy of it. May I see it?

(Mr. Barnes) Oh, I am sorry.

(The Court) Mr. Barnes gave me a copy of all these things this morning and left them with my secretary before court.

(Mr. Barnes) Yes.

(The Court) So I have a copy of what has been offered.

("Excerpt of Minutes of Meeting of Board May 1st, 1957" was marked Defendants' Exhibit 14.)

Q. (Mr. Barnes) Now, Mr. Willis, I think the minutes speak for themselves, but would you explain to the Court the purpose of that minute? A. This minute was considered and written in this form to clarify and make specific the policy passed at the February meeting. This had been — the February 6th — this plan had been discussed before the State Board of Education and in this court, and this is no deviation from it.

Really it is not intended to be a deviation, but it is intended to make specific what was considered to be somewhat vague from the original policy statement.

Q. Now, I did note that in Defendants' Exhibit 14 that you did state that "In accordance with this plan, the following elementary schools will be open in all six grades for Negro pupils at the beginning of the 1957-1958 school year," this year.

Why did you use the word "Negro" there? Any particular reason? A. None other than clarification, and to be specific, that was the purpose of this whole statement of May 1st.

Q. Now, then, what did you do with this resolution or excerpt from the minutes of May 1, 1957? Did you give it to any official group in the Harford County School system? A. No, because there was nothing new about this. We did give it to our principals.

Q. That's what I mean. A. At their meeting a few days later; I believe it was May 9th.

Once a month we have all of our principals in for a meeting. We gave this to them because they were particularly concerned with which schools would be opened and about registrations.

We also gave them another statement which was similar to the advertisement that appeared in the paper because they had to accept the first grade registrations later in that month. I believe the date is there; I don't have it. The 24th of May, I think.

Q. The date of publication? A. No, the date of registration for first grade.

Q. I think it's the 24th. A. It's on the advertisement.

Q. The 24th.

(Mr. Barnes) If Your Honor please, just to keep the sequence in order, I would like to offer in evidence the letter of May 2d, 1957 from Mrs. Juanita Jackson Mitchell to me, the letter dated, I believe I said May 2d, 1957, and received by me on May 3d, 1957 as Defendants' Exhibit 15.

(Letter Mitchell to Barnes dated May 2, 1957 was marked Defendants' Exhibit 15.)

Q. (Mr. Barnes) Now, Mr. Willis, I think you said you published this notice in the papers of Harford County, the local papers on May 16th, 1957.

Is this a copy of that notice? A. Yes, it is.

* * * * * *

(R. 255-268):

(The Witness) May I make a statement for the record?

I am not sure that I gave out that advertisement as written to the principals. We gave out this policy, but I am not sure I gave that advertisement. I am not sure I did. In fact, I think we talked about it on the basis, on that basis rather than my giving them that paper.

Q. (Mr. Barnes) Now, I show you an excerpt from the minutes of the regular June meeting of the Board of Edu-

cation of Harford County dated June 5, 1957. Are you familiar with that, Mr. Willis? A. I am, yes.

Q. Was that passed by the Board at a meeting at which there was a quorum present? A. Yes, it was.

Q. And it represents the official action of the Board of Education of Harford County? A. That's correct.

(Mr. Barnes) We would like to offer this in evidence as Defendants' Exhibit No. 16.

(The Clerk) Defendants' Exhibit 16.

(Excerpt from minutes of regular June meeting, Board of Education Harford County dated June 5th, 1957 was marked Defendants' Exhibit 16.)

Q. (Mr. Barnes) Now, Mr. Willis, I would like you to state in your own words how this modification, I suppose we could call it — it's a good word, if Your Honor please — the modification of the plan in regard to the high schools of Harford County during the interim period, how that will practically operate in Harford County? A. There were several points brought up by Mr. Greenberg that we had not considered. The first one was about the seventh grade. When this plan was passed, the Board was thinking in terms of transfers to all high school grades.

Now, actually the way it is written, it says, "Transfers will be considered for admission to the high schools of Harford County."

That was meant to include all sixth grades.

(The Court) You mean it was intended to include admission to the seventh grade?

(The Witness) Yes.

(The Court) As well as transfers to the—

(The Witness) That is correct.

(The Court) —to the eighth grade?

(The Witness) Yes, and I believe actually it is written that way, that their transfers will be considered for admission to the high schools, whether you consider a transfer from the sixth to the seventh as being, not being a transfer, and we didn't think of it in that way as being to all six grades in the high school.

The way it would work practically would be that anyone who wanted to request such a transfer could get the necessary form from our office because the schools would be closed before this would become effective, and return it, fill it out and return it by July 15th.

It would then be considered by a committee of five people; the principal of the school last attended by the child, the principal of the school to which the child was requesting the transfer, the Director of Instruction, who is the head of our supervisory staff.

He actually would be under the heading of a supervisor, but we spell it out to make it specific, and the supervisors from our office who work in the two schools concerned, the sending school and the receiving school.

(The Court) Are the supervisors who work in the Negro schools Negro?

(The Witness) No, sir.

(The Court) Not any?

(The Witness) We did have — no, sir, we only have the two schools there, and the last Negro supervisor became principal of a larger high school, or became principal of the largest consolidated school that we have when we opened it several years ago.

(The Court) You have had Negro supervisors, but you have not now?

(The Witness) We had only two in my twelve years, but we don't have any now.

Q. (Mr. Barnes) Now, Mr. Willis, before we leave that subject, why did you select or why did the Board select

the two principals from the respective schools as part of the personnel making up the committee? What was the reason or rationale of that? A. Well, the basis of this whole policy would be the individual pupils' adjustment and the probable success. Unfortunately high school teachers are subject-minded rather than children-minded.

Now, I am afraid that I am getting into a pedagogical statement here, but I believe some people in this room at least will understand what I am saying.

Elementary teachers think of the children they have and working with them to develop. I am afraid too many high school teachers think only in terms of the subject matter they are teaching and have a tendency to forget the children that they are trying to teach and not the subject before them.

(The Court) Some people would maybe like to mix them up a little and increase the percentage in each, increase the percentage of the opposite in each.

(The Witness) Well, probably, but any rate, the child's adjustment is more in his own hands in high school than it is in elementary school, and we wanted the principal of the school, the sending school on such a committee even if he weren't there otherwise because he would have the best knowledge of that individual as to his personality and the probability of his successful adjustment.

Now, as far as the test results are concerned, we have a rather extensive testing program in 99 percent of the cases at least, and would already have that information. We might want to supplement it. I don't know. That would depend upon the committee and its action.

Q. (Mr. Barnes) In the school heirarchy, where is the director of instruction? A. Well, in our case, the director of instruction is over the supervisory staff and the curriculum development program. As it indicates, he is in charge of instruction in all levels in our school system.

Q. He is directly under you? A. Yes.

Q. And then the County Supervisors, where are they in the school heirarchy? They direct the instructors? A. Yes, and they work with the teachers in the school and in some cases with the children.

Now, I dare say they would know the greatest problem cases, and the very best ones. The mass of them they would not know because their work is with the teachers, and in our case we try to keep that from about sixty to a hundred teachers per supervisor.

Q. Now, this plan would apply to either the white or colored children desiring a transfer; is that correct, Mr. Willis? A. It would have to, yes, because it doesn't state any particular kind.

At the present time we get very few requests from white children. Most of them are from outside the county, such as those in Baltimore County who want to comeup, and we have had a lot of trouble in the past, and this would help us in that area.

Q. Well, it would apply to the white children who wish a transfer the same as colored children? A. It would have to from now on, yes.

Q. And "these applications would be approved or disapproved on the basis of the probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation.

"This will include, but not be limited to the results of both standardized intelligence and achievement tests, with due consideration being given to grade lever achievement, both with respect to ability and with respect to the grade into which transfer is being requested."

Now, how would that operate practically, Mr. Willis? A. Well, I would say that as applications come in, that this group would get from the school, and it would be very easy because the principal has charge of the records at the school, to get the folder on that child, which has in it his

achievements all the way through school up to that time, and his test record.

The only reason that might not be complete would be if he missed time when the regular testing program was being carried on or unless he were transferring into our system at some recent date.

And in some cases these folders would also contain anecdotal records of — I hate to say "problems" but I am afraid most of them would be that, with that child.

We try to put in other things about them, but usually it gets to a point where the troublesome things get it and the good ones don't.

Q. Well, that's typical of life. A. I better continue.

Q. Yes. A. Those records would then be made available for the full committee who should consider each individual case on the basis of the records involved.

Q. Now, I believe the resolution of May 1st, 1957, Defendants' Exhibit 14, which clarified the elementary school plan, stated that:

> "As a normal result of this plan sixth grade graduates will be admitted to the junior high schools for the first of September 1958 and proceed through high school to the next higher grade each year. This will completely desegregate all the schools of Harford County by September 1963."

Now, I note that in the resolution of June 5th, 1957, Defendants' Exhibit No. 16, that this plan of transfer operates immediately.

Now, would you explain how a child who is in the sixth grade at the present time would normally go into the seventh grade automatically; is that correct? A. You mean next year?

Q. Yes. A. Well, let's suppose a child attended the sixth grade in the Aberdeen Elementary School next year, there

would be no question of any transfer there because he would be moving along with his class.

If he were in the sixth grade of the Central Consolidated School, or rather if he were in the sixth grade of the Havre de Grace Consolidated School, which would be serving that same area, then I would think that he would have to make a request for transfer the following year so that we would know how to plan for his placement in the fall of that year.

(The Court) Well, that is complicated by the fact that the sixth grade — there is a sixth grade in the Aberdeen High School.

(The Witness) Yes.

(The Court) You better take a more typical example or case.

(The Witness) Well, it would be so, but let me look at my sheet.

If there were one in the Halls Cross Roads Elementary School, which is that same area, it would still be the same situation.

I didn't mean to complicate it; I meant to simplify it.

(The Court) Well, let me get this clear. Beginning in 1958, do I understand that your plan contemplates that a child graduating from the sixth grade in the Havre de Grace Consolidated School, and a child graduating from the sixth grade in some other elementary school as—

(The Witness) Well, Halls Cross Roads.

(The Court) —Halls Cross Roads Elementary School, which is a white school, that those two sixth graders will be able to go to a presently white high school on exactly the same basis?

(The Witness) That's correct.

(The Court) Without any different evaluation of one from the other?

(The Witness) That's correct.

(The Court) And that the child who graduates from the sixth grade in the Consolidated School, if he happens to have gone there, can continue in that Consolidated School to the seventh grade or can go through a white school on the same basis, that if he would be admitted to one, he would be admitted to the other.

(The Witness) The only difference would be that we would have to know he wanted to go there.

(The Court) Well, there would be an application.

(The Witness) There wouldn't be in the case of the white school because we would assume he wanted to go there.

(The Court) But there would be no further tests,—

(The Witness) That's correct.

(The Court) —of any sort applied to any such entrant into a seventh grade beginning in September 1958; is that my understanding?

(The Witness) That's correct.

(The Court) And that is still the plan? I mean, the modification does not change it?

(The Witness) Does not change that, no.

(The Court) Do I understand that the modification applies only during the period of transition?

(The Witness) During the interim period, yes.

(Mr. Barnes) Yes.

(The Witness) During the interim period, yes.

(The Court) This applies to the admission of the seventh grade only during the interim period?

(The Witness) Yes.

(The Court) Now, may I get this clear: You say that the plan will apply to white students as well as colored students?

(The Witness) The only one I can think of would be one coming from another county.

(The Court) Yes.

(Mr. Greenberg) Yes.

(The Court) Well, let me get this clear: Is the June 5th, 1957 plan or modification of the plan entirely a transition period plan and is expected to terminate grade by grade so that it will be entirely out of the picture by 1963?

(The Witness) Insofar as Negro pupils are concerned, but if we find that it works with these other cases that have been somewhat of a problem, we probably will continue it with them.

(The Court) So that it is only intended to apply to transfers during the interim period?

(The Witness) That is correct.

(The Court) And that after the interim period your plan is that Negro students may transfer from school to school on the same basis as white children?

(The Witness) Yes.

(The Court) Now, there is one thing that isn't clear to me: In the second paragraph of your excerpt which Mr. Barnes has just read, it says:

> "Transfers will be considered for admission to the high schools of Harford County. Any student wishing to transfer to a school nearer his home must make application to the Board of Education."

Now, I want to see how that applies. Does that mean that a colored child who lives nearer the Hickory School than he does to Bel Air, let us say, must attend Hickory and may not transfer to Bel Air under any circumstances, or is this nearer his home a limitation, or is that intended to be a limitation?

(The Witness) Well, the reason that was put in there is because this is our policy in all other cases, in all other children, in all other high school areas.

For instance, children in Edgewood must go to Edgewood and not to Bel Air, and we have some basic problems within the County on that in the white schools.

* * * * * *

(R. 344):

EXCERPT FROM DEFENDANTS' ANSWER EXHIBIT NO. 1

At a Meeting of the Harford County Citizens Consultant Committee held on Monday, February 27th, 1956, at 8 P. M. at Bel Air, Maryland, it was unanimously RESOLVED

To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools; effective for the school year beginning September, 1956.

ERNEST VOLKART,

Chairman.

Certified True and Correct.

/s/ CHARLES W. WILLIS,

Secretary-Treasurer.

copy: dh

Adopted by the Harford County Board of Education, as submitted, at its regular meeting on March 7, 1956.

/s/ CHARLES W. WILLIS,

Secretary-Treasurer.

(Seal)

(R. 346):

DEFENDANTS' ANSWER EXHIBIT NO. 2

Dated: June 14, 1956

BOARD OF EDUCATION OF HARFORD COUNTY

BEL AIR, MARYLAND

TRANSFER POLICY

If a child desires to attend a school other than the one in which he is enrolled or registered, it will be necessary for his parents to request a transfer. Applications for transfer are available on request. These requests should be addressed to the Board of Education, c/o Superintendent of Schools, Bel Air, Maryland. Applications will be received by the Board of Education between June 15 and July 15, 1956. All applications for transfer must state the reason for the request, and must be approved by the principal of the school which the pupil is now attending.

Applications for transfer will be handled through the usual and normal channels now operating under the jurisdiction of the Board of Education and its executive officer, the Superintendent of Schools.

While the Board has no intentions of compelling a pupil to attend a specific school or of denying him the privilege of transferring to another school, the Board reserves the right during the period of transition to delay or deny the admission of a pupil to any school, if it deems such action wise and necessary for any good and sufficient reason.

All applications for transfer, with recommendations of the Superintendent of Schools, will be submitted to the Board of Education for final consideration at the regular meeting of the Board on Wednesday, August 1, 1956. When requests for transfer are approved, parents must enroll their child at the school on the regular summer registration date, Friday, August 24, 1956.

(R. 348):

DEFENDANTS' ANSWER EXHIBIT NO. 3

Desegregation Policy

Adopted by the Harford County Board of Education

August 1, 1956

The Board of Education of Harford County appointed a Citizens' Consultant Committee of thirty-five members in July, 1955, to study the problems involved in the desegregation of Harford County schools. This committee met in August, 1955 and appointed subcommittees to make intensive studies of several phases of this problem. The full committee held its final meeting on February 27, 1956, heard subcommittee reports, discussed many aspects of the problem, and unanimously resolved:

> To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools; effective for the school year beginning September, 1956.

This resolution was adopted by the Board of Education at its regular March meeting.

At the regular June meeting of the Board of Education, a transfer policy was adopted, and procedures for requesting transfers were established.

The Supreme Court decision, which required desegregation of public schools, provided for an orderly, gradual transition based on the solution of varied local school problems. The resolution of the Harford County Citizens' Consultant Committee is in accord with this principle. The report of this committee leaves the establishment of policies

based on the assessing of local conditions of housing, transportation, personnel, educational standards, and social relationships to the discretion of the Board of Education.

The first concern of the Board of Education must always be that of providing the best possible school system for all of the children of Harford County. Several studies made in areas where complete desegregation has been practiced have indicated a lowering of school standards that is detrimental to all children. Experience in other areas has also shown that bitter local opposition to desegregation in a school system not only prevents an orderly transition, but also adversely affects the whole educational program.

With these factors in mind, the Harford County Board of Education has adopted a policy for a gradual, but orderly program for desegregation of the schools of Harford County. The Board has approved applications for the transfer of Negro pupils from colored to white schools in the first three grades in the Edgewood Elementary School and the Halls Cross Roads Elementary School. Children living in these areas are already living in integrated housing, and the adjustments will not be so great as in the rural areas of the county where such relationships do not exist. With the exception of two small schools, these are the only elementary buildings in which space is available for additional pupils at the present time.

Social problems posed by the desegregation of schools must be given careful consideration. These can be solved with the least emotionalism when younger children are involved. The future rate of expansion of this program depends upon the success of these initial steps.

(R. 360-361):

DEFENDANTS' ANSWER EXHIBIT NO. 8

"The Daily Record" — Wednesday

June 29, 1955

June 20, 1955.

Dr. Thomas G. Pullen, Jr.,
State Superintendent of Schools.

You have asked us to advise you formally of our views with respect to the legal effect of the decision of the Supreme Court, and particularly of its opinion and decree of May 31, 1955, in Brown et al. v. Board of Education of Topeka et al. In that connection, you state in your letter in reference to our earlier oral conferences: "* * * As I understand your position, by virtue of the decree all constitutional and legislative acts requiring segregation in the State of Maryland are a nullity, and further, it is legally incumbent upon the school authorities of the State and local school systems 'to make a prompt and reasonable start toward full compliance' with the ruling of the Supreme Court on May 17, 1954."

As is obvious from your statement, the Supreme Court rendered its first opinion in the Brown et al. cases on May 17, 1954, and while it then held that racial discrimination in public education is unconstitutional, it deferred final action on the cases pending further argument on certain specific questions having to do with the form of decree which the Court should enter. In its second opinion, rendered May 31, 1955, the Court took final action on the judgments under review and remanded the cases to the Courts of origin to take such proceedings and enter such orders and decrees as would be consistent with the supplemental views expressed in the May 31, 1955, opinion.

In its May 31, 1955, opinion, the Court stated at the outset:

"These cases were decided on May 17, 1954. The opinions of that date, declaring the fundamental principle that racial discrimination in public education is unconstitutional

are incorporated herein by reference. *All provisions of federal, state, or local law requiring or permitting such discrimination must yield to this principle. There remains for consideration the manner in which relief is to be accorded.*" (Italics supplied.)

We believe that the two opinions of the Supreme Court in the Brown et al. cases mean just what they say, namely, that "All provisions of federal, state, or local law requiring or permitting such discrimination(racial discrimination) must yield * * *" to the principle that such discrimination in public education is unconstitutional. It would necessarily follow that, since the Constitution of the United States is the supreme law of the land, all constitutional and legislative acts of Maryland requiring segregation in the public schools in the State of Maryland are unconstitutional, and hence must be treated as nullities.

In its opinion of May 31, 1955, the Supreme Court directed the United States District Courts to require "* * * that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling." It is true that this statement was made with respect to five consolidated cases in which neither the State of Maryland nor any administrative body or officer thereof was a party, although the State did participate in the argument of the case as *amicus curiae*. It might be argued that since the State of Maryland was not technically a party, the direction of the Supreme Court is not yet applicable to the State of Maryland, and that such direction would not be applicable until such time as suit is filed against the State or some educational official and a final order making the direction applicable entered in such suit.

This argument to our mind confounds what is the clear state of the law and the nature of the relief which may be afforded in the event that there is not full compliance with the law. Obviously, in the event that there is a refusal to comply with the law, the mechanics of the relief might be different in the case of the State of Maryland from that granted in the case of one of the other States which was a defendant in one of the five consolidated cases in which

the Supreme Court acted. However, the law with respect to public education as laid down by the Supreme Court is crystal clear, and we do not believe that differences in the mechanics of obtaining relief can limit in any sense the legal compulsion presently existing on the appropriate school authorities of the State of Maryland to make "* * * a prompt and reasonable start" toward the ultimate elimination of racial discrimination in public education.

C. FERDINAND SYBERT,

Attorney General.

HARRISON L. WINTER,

Deputy Attorney General.

(R. 363-364):

DEFENDANTS' ANSWER EXHIBIT NO. 9

June 22, 1955

JOINT RESOLUTION OF THE STATE BOARD OF EDUCATION OF MARYLAND AND THE BOARD OF TRUSTEES OF THE STATE TEACHERS COLLEGES OF MARYLAND.

(The members of the State Board of Education and the State Superintendent of Schools comprise the Board of Trustees of the State Teachers Colleges.)

WHEREAS, The Supreme Court of the United States passed its final judgment and decree on May 31, 1955, in the consolidated group of public school cases, determining the procedure to put into effect the Court's opinion of May 17, 1954, that the 14th Amendment of the Constitution of the United States, prohibiting any State from denying to any person within its jurisdiction the equal protection of the laws, is no longer satisfied by the former doctrine of separate but equal public school facilities, but now, on the contrary, prohibits any State from requiring or permitting racial discrimination in public education; and

WHEREAS, the Attorney General of Maryland has advised that the final decision of the Supreme Court is now the law of the land and is automatically binding upon the public school system of Maryland and upon the several local school officials throughout the State, and that the State Courts and the Federal Courts, should cases arise, are bound by the decision of the Supreme Court to recognize and give full force and effect thereto in the light of the equitable procedural considerations announced by the Supreme Court.

Therefore RESOLVED by The State Board of Education of Maryland and The Board of Trustees of the State Teachers Colleges of Maryland, in joint session, pursuant to the law of the land and pursuant to the procedural steps announced by The Supreme Court of the United States, and pursuant to the authority vested in these Boards by the laws of The State of Maryland, that the following are adopted as policies for guidance in the public school system of Maryland and in the several geographic units throughout the State of Maryland, namely that:

1. It is recognized that the law of the land as announced by The Supreme Court of the United States automatically has had the effect of abolishing all laws of the State of Maryland which raised any distinction according to race in the public school system of the State of Maryland and of its local subdivisions.

2. Segregation according to race is hereby abolished in all of the State Teachers Colleges of Maryland. Historically and under the former practice of separate but equal facilities the present five State Teachers Colleges have heretofore been classed into three colleges for white students and two colleges for colored students. That classification is now eliminated.

3. The Supreme Court recognized, and the State Board of Education recognizes, that factual conditions vary in different localities throughout the State, growing out of the formerly established principle of separate but equal facilities, now declared to be unconstitutional and violative of

the 14th Amendment. Such conditions may include public school building facilities, locations of the same with respect to population density of residential areas, transportation problems, teaching staffs, and other local and geographic conditions if applicable and pertinent to the transition from segregation to integration.

4. The State Board of Education by its statement of May 26, 1954, recommended that the local public school officials evaluate their respective local conditions and problems in anticipation of the final decision of the Supreme Court. All of the County public school officials have made or are making such studies. Now that The Supreme Court has passed its mandate and has directed compliance with its decree with deliberate speed and with due regard to local conditions and in conformity with equitable considerations, the State Board of Education calls upon the local public school officials to commence this transition at the earliest practicable date, with the view of implementing the law of the land. Voluntary compliance with deliberate speed, without the necessity of Court compulsion, is advised on the part of all local public school officials throughout the State.

5. The Staff of the State Department of Education shall co-operate in all possible ways with local public school officials to give effect to the law of the land in the process of the transition from segregation to desegregation.

6. Traditionally the citizenry of our State has always accepted constitutional principles as interpreted by The Supreme Court of the United States, as the law of the land. The State Board of Education trusts that all citizens will exercise patience and tolerance to the end that the law of the land may be implemented in the elimination of racial discrimination in the public schools of the State.

(R. 367):

DEFENDANTS' EXHIBIT NO. 11

Excerpt from the Minutes of the Regular February Meeting of the Board of Education of Harford County.

February 6, 1957

Extension of the Desegregation Policy for 1957-1958

Applications for transfers will be accepted from pupils who wish to attend elementary schools in the areas where they live, if space is available in such schools. Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom.

Under the above provision, applications will be accepted for transfer to all elementary schools except Old Post Road, Forest Hill, Bel Air, Highland, Jarrettsville, the sixth grade at the Edgewood High School, and Dublin. Such applications must be made during the month of May on a regular application form furnished by the Board of Education, and must be approved by both the child's classroom teacher and the principal of the school the child is now attending.

All applications will be reviewed at the regular June meeting of the Board of Education and pupils and their parents will be informed of the action taken on their applications prior to the close of school in June, 1957.

(R. 370-374):

STATE BOARD OF EDUCATION
BALTIMORE, MARYLAND

In the Matter of:

Appeal to the State Board of Education in Denial of Applications for Transfers in Harford County, Maryland.

Baltimore, Maryland

Wednesday, February 27, 1957

The above matter came on for hearing in Board Room No. 2, State Board of Education, Baltimore, Maryland, commencing at 10:30 o'clock, a.m., Wednesday, February 27, 1957.

Before: Wendell D. Allen, President, Jerome Frampton, Jr., Vice-President, Mrs. Kenneth S. Cole, Member of the Board, William A. Gunter, Member of the Board, Dwight O. W. Holmes, Member of the Board, Mrs. Richard Marcus, Member of the Board, George C. Rhoderick, Member of the Board and Thomas G. Pullen, Jr., Secretary-Treasurer.

Present Also: Miss Drusilla Chair.

Appearances:

Juanita Jackson, Esq., Tucker R. Dearing, Esq. and Robert B. Watts, Esq., on behalf of the Complainants.

Edward C. Wilson, Jr., Esq., and Wilson K. Barnes, Esq., on behalf of the Board of Education of Harford County.

Alexander Harvey, Esq., Assistant Attorney General of the State of Maryland.

Proceedings

(The Chairman) Are we ready to proceed? Are the parties here represented by counsel? Who represents the school children?

(Mrs. Mitchell) I and my associate. I am Juanita Jackson Mitchell and Mr. Deering and Marcus both are associated with me. I am waiting for Mr. Deering.

(The Chairman) Suppose we wait a few minutes until he arrives. Would you prefer that? You don't think he will be too long?

(Mrs. Mitchell) I don't think so but I think we may proceed.

(The Chairman) Proceed without him?

(Mrs. Mitchell) Yes.

(The Chairman) Is the Defendant ready?

(Mr. Barnes) We are ready.

(The Chairman) Will the reporter make a notation in the record that Mr. Alexander Harvey, Assistant Attorney General of Maryland is present as legal advisor of the State Board of Education.

Now, we have before us today, an appeal to the State Board of Education from the Harford County School Superintendent, denying applications for transfers in public schools in Harford County, Maryland, the Appeal being set forth in a letter dated December 6, 1956, addressed to the State Board of Education and signed by Tucker R. Dearing, Juanita Jackson Mitchell and Robert B. Watts, attorneys for the Appellants.

Appellants are Dennis Bernard Spriggs, age twelve; Stephen Presbury Moore, III, age ten; Earlene Scott, age seven; Mona Leisia Scott, age six; Robert McDaniel, age ten; David Roland Bell, age six; James J. Bell, Jr., age six; Bernard Samuel Blackstone, age eleven; Larry Wilson Blackstone, age fifteen; Ellen Elizabeth Blackstone, age nine; Aurelia H. Boose, age nine; Maurice L. Horsey, III, age seven.

Now, I ask you, Mrs. Mitchell, are they the twelve Appellants? There is no change in the list of twelve Appellants?

(Mr. Deering) I believe one has gone overseas.

(Mrs. Mitchell) That is Aurelia H. Boose.

(The Chairman) Make a notation that the Counsel for Appellants have eliminated the eleventh child, Aurelia H. Boose, for the reason that—

(Mrs. Mitchell) Her father is a Colonel in the Armed Services and has now been sent overseas.

* * * * * *

(R. 443-445):

CHARLES W. WILLIS,

was called as a witness by and on behalf of the County School Board, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Barnes:

Q. Mr. Willis, will you state your full name, please? A. Charles W. Willis.

Q. What is your official position? A Superintendent of Schools, Harford County.

Q. How long have you been in that position? A. Almost twelve years.

Q. What is your educational background? A. Going clear back, a graduate of Chestertown High School in Kent County in 1926; Western Maryland College in 1930; Masters from Columbia in 1934; and I have completed the work for Doctorate at Columbia, which is dependent upon my completion of a thesis.

Q. At Western Maryland, did you specialize in Education? A. Yes, sir.

Q. You were then the Superintendent of Schools for Harford County in 1955, is that correct? A. That is correct.

Q. After the opinion of the Attorney General of Maryland to Dr. Pullen on June 20, 1955, what did the Board of Education of Harford County do, just briefly? A. The Board of Education met on, I think it was June 30. They had their regular July meeting a couple of days ahead of time at my request. I wished to be away during that month at summer school, and at that session of the Board, they appointed an Advisory Committee to study the problem of integrating the schools of Harford County and asked them to report back to the Board of Education when they made a study of this problem.

That Committee consisted of thirty-five members, six of whom were Negroes, and the Chairman is Mr. Ernest Volkart, who has been previously mentioned this morning.

Q. And you were not a member of the Citizens Committee, were you? A. No, sir. The Board particularly wished that I not meet with them and appointed my Assistant Superintendent, Mr. Benjamin S. Carroll, to meet with the Citizens Consultant Committee. He, however, was in the hospital and unable to meet with them at one of their meetings, and I attended that one.

Q. Well now, I direct your attention to February 27, 1956. Do you recall that date? A. I do.

Q. That is the date that the Citizens Consultant Committee met and adopted a resolution. Are you familiar with that resolution? A. I am.

Q. Do you have a copy of it with you? A. Yes, I do.

Q. I would like to offer that in evidence as Defendant's Exhibit No. 1.

* * * * * *

(R. 446-447):

Q. (Mr. Barnes) What action if any, did the Board of Education in Harford County take on that Resolution? A. They approved that resolution at the regular meeting in March.

Q. March 7, 1956. Is that correct? A. That is correct.

Q. Now, I direct your attention to June 14, 1956, Mr. Willis, and particularly to the Transfer Policy announced by the Board of Education of Harford County on that date.

Do you have the Transfer Policy? A. I do.

Q. I would like to offer that in evidence as Defendant's Exhibit No. 2. That was adopted by the Board of Education, June 14, 1956.

* * * * * *

(R. 448-449):

Q. * * * did you have any application for transfers, and if so, what were they? A. Well, I don't recall we had any in this year. It seems to me that there were one or two the prior summer before we had any policy — after the 1954 opinion — but I don't recall. It would be '55, in the summer of 1955. This is 1956.

Q. I am talking about this. A. None prior to this.

Q. Subsequent to this, were there any applications? A. We had 60 applications as a result of this policy.

Q. Yes; and those 60 applications conformed to the requirements which set forth your Transfer Policy, is that correct? A. That is correct.

Q. Now, Mr. Willis, what did the Board of Education do in regard to those applications for transfer? A. Well, they were considered at the August 1 meeting and at that meeting, the desegregation policy of August 1 was drawn up and used as a basis for approving or disapproving the application — disapproving the applications. This the Board considered as the first part of a desegregation plan for the reason set forth in it and there were several things that prompted that.

* * * * * *

(R. 450-454):

Q. (Mr. Barnes) Now, Mr. Willis, this Desegregation Policy mentions certain considerations which the County Board of Education formed. Will you elaborate on those factors? A. Well, one factor that we had in mind was that

after the original case had been discussed down here, I think Mr. Wilson verbally at least, talked to me and said that the proposal, that the suggestion had been made, that we probably could start this program in the areas of Edgewood and Aberdeen where we did have an influx of people and a different climate than we had in the upper part of the county. I don't know if those terms were used by I think that was one thing.

A. other thing is that we had observed a change in the climate of the thinking of our people on this question over a period of the year that they had been thinking about it. Right after the Supreme Court decision and especially after the second decision, we had one group before the Board protesting that we do anything, and we had a lot of private conversations with people and some very rabid ones, against any change, and we have a peculiar situation in Harford County, that if you don't know the county, you would hardly be expected to be familiar with it, in that we have had a great influx of people from the south in the farming regions and we had a different feeling in the farming region from the county than we would in the built-up region around the Army bases. In Edgewood and Aberdeen, and extending down to Havre de Grace. So we do have a different feeling that we have to take in consideration. I think that was probably in the mind of Judge Thomsen and our attorneys when they talked this over but that was one thing that influenced us, the difference of feeling in the different parts of the county and the difference in composition of it, with respect to backgrounds of our citizens.

Now, the other thing was a matter of school facilities. We are very proud of the fact in Harford County that we have not had double shifts or rent many buildings in recent years, while we have been having 100 percent increase in our school population in the last ten years. We had about 7,000 children ten years ago; we have 14,000 now, and during that time, we have housed them. We spent about $14 million for school construction. We are continuing that. We have a $3 million program projected half for this year and half for next year and we are getting it under

way at the present time; and we think class size is very important. That was taken into consideration by the original Citizens Committee when they put the words, school facilities, I believe, in the Resolution, that we do something with respect to available facilities.

Strictly to the interpretation of available facilities, the two schools that we integrated plus two others, were the only ones that had any available facilities according to the projections that we could make of enrollments for the following year. Those other two small schools were Perryman, where we had no applicants, and Darlington, where we had one.

Now, Darlington is very much rural and I think one child up there may have been causing us some problems. We, like the people who spoke this morning, are proud of the fact that we do not have any racial tensions in Harford County and we are trying to keep it that way and some of us have had to sit on the lid of a few fiery individuals. We all have them, and they are the kind, though, that set the spark on and drop your whole program backward, and we were very cognizant of that whole problem and we felt it would be sounder to start with the children in the lower grades, where social problems are not so great, where they can start along with one another and continue with one another and not come from diverse backgrounds and diverse systems later on. I think those were the factors which influenced the passage of this policy that you just read.

Q. And pursuant to that policy, I believe fifteen of the applications you received were granted. Is that not correct? A. That is correct.

Q. And forty-five were refused. Is that correct? A. On the basis of policy. There is one other little thing worth mentioning. One man — I think he is the one who has now moved away — removed himself away from this. Sgt. Boose came to me after school was open, and due to a misunderstanding, he had not gotten an application for his child, who was in the first grade, and we felt the misunderstanding was due to clerical help in our office, so we

immediately allowed him to fill an application and put the child in the first grade. I think he is the man who has now moved away, thought, but that indicated that we were not trying to restrict, even after the deadline, when there was a reason there for admitting the child.

Q. Now, I direct your attention to January 2, 1957, Mr. Willis; I notice at that time, that you have an excerpt from the minutes of the regular January meeting of the Board of Education of Harford County, which we would like to offer as Defendant's Exhibit No. 4.

* * * * * *

(R. 456):

Q. Now, Mr. Willis, I direct your attention to February 6, 1957, which was a regular meeting of the State Board of Education for February of this year. Did the Board take any action in regard to its desegregation policy for the next year? That is, for 1957-1958? A. Yes, and that policy is listed as the last page of this.

Q. And I would like to offer that in evidence as Defendant's Exhibit No. 5.

* * * * * *

(R. 458-462):

Q. (Mr. Barnes) Now, would you explain more fully to the Board how that desegregation policy for the ensuing year 1957-1958 would operate, Mr. Willis? A. We have nineteen schools — eighteen schools — in which we have elementary pupils; two of these are high schools in which we only have the sixth grade housed at the present time. The others are straight elementary schools, and then, in addition to those, we have had two consolidated schools at Bel Air — the Central Consolidated — and Havre de Grace Consolidated, in Havre de Grace.

Now, under this provision, all elementary schools that are not more than ten percent overcrowded as of February 1, would receive applications for transfers and that would mean that those schools would conceivably be from sixteen to twenty percent overcrowded next fall, because we have

in the county from seven to ten percent increase in enrollment each year. The amount of enrollment increase remains about constant, so the percentage is dropping a little. If you get my explanation, we have about one thousand to eleven hundred next year — and increase of one thousand to eleven hundred — on top of 14,000 which will be about a seven to eight percent increase.

Now, that is not constant at all schools in the county. It is spread out over the county; at some places it might be a ten percent increase in a school; in other places five; but in order to get a basis from which to operate, we discussed this problem and decided we better operate from a ten percent basis as of February 1. All schools not more than ten percent overcrowded, as of February 1, would receive applications for transfer into the elementary schools in the county. That would be in the first six grades, and according to our official figures as of the end of the month of January, these schools listed here are more than ten percent overcrowded. Some of them as much as twenty-five percent at the present time.

Q. Well now, would you then just for the record, compare briefly the increase, you might say, or the extension of the desegregation policy now enunciated, over the one promulgated on August 1, 1956? A. That would be for three grades in two schools and this would be for six grades in nine schools.

Q. I see. A. And if you count those two high schools, it would be eleven, really.

Q. Don't you have a building program? I think you testified you had a building program on foot which will relieve some of this overcrowding. What about that, Mr. Willis? A. Three of these schools will be relieved, we hope, by another year. We have plans to construct a four-room addition at Highland, which is one of these listed — an eight-room addition in Old Post Road, which is another, and another 24-room elementary school in Bel Air. A complete school that is not an addition.

Q. So that in those three locations, the building program would eliminate the overcrowded condition, and automatically the desegregation policy would apply. Is that not correct? A. By another year.

Q. By another year. A. By '58. By September '58, if no unforeseen developments come up in this building program.

Q. Yes. Then I think, you are going to operate a Junior College at Bel Air, are you not? A. We are planning to open one in September of this year.

Q. September of this year? On what basis would that be operated? A. On an integrated basis. Probably only one year in the beginning, though. One year beyond high school.

Q. Now, you were present at the meeting of the Board of Education of Harford County when these specific desegregation policies were adopted, were you not, Mr. Willis? A. That is correct.

Q. These matters were thoroughly and fully discussed were they not? A. Not only at these meetings, but in practically every other meeting that led up to them.

Q. Would you say that the efforts on behalf of the Board of Education to integrate schools of Harford County had moved forward on a reasonable basis? A. I would say so Yes, sir.

Q. And with all practicable and deliberate speed? A I would say so. Yes.

Q. As a matter of fact, when this new extension goes into effect, the children in the normal course of events in the schools which had been integrated will move forward, assuming they pass their courses; right on forward, will they not? A. That would be the minimum movement.

Q. The minimum movement? A. Yes.

* * * * * *

(R. 515-516):

DAVID G. HARRY, JR.,

was called as a witness, and being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Barnes:

Q. Will you give your full name, please? A. David G. Harry, Jr.

Q. What is your official position? A. President of the Board of Education of Harford County.

Q. How long have you been in that position? A. Almost six years.

Q. You were there in office as President of the Board in 1954 and 1955. Is that not correct? A. I was.

Q. You have been in this Board Room during this entire hearing, have you not? A. I have.

Q. You heard the testimony of Mr. Willis, the Superintendent? A. I did.

Q. Was the testimony which he gave correct? A. It was.

Q. Do you have anything to add to that, or to change it? If so, will you now give it? A. I have nothing to add or change.

* * * * * *

(R. 530):

(The Chairman) Could I ask a question as to the action of the Citizens Consultant Committee? I understand there were five Negroes on that Committee and about thirty white members of that Committee. Was there any minority report of the Citizens Consultant Committee?

(Mr. Willis) No, there was not. There were six Negroes and I think thirty others, counting Mr. Volkart. There were thirty-six members, and there was no minority report sub-

mitted. This was the only report officially which the Committee submitted.

(The Chairman) Did you happen to know if this was a unanimous report of the Committee.

(Mr. Willis) It was. That evening, it was a unanimous report of the Committee.

* * * * * *

(R. 567-571):

DEFENDANTS' EXHIBIT NO. 13

Appeals

Before the State Board of Education of Maryland

Dennis Bernard Spriggs, Stephen Presbury Moore, III, Earlene Scott, Mona Leisia Scott, Robert McDaniel, David Roland Bell, James J. Bell, Jr., Bernard Samuel Blackstone, Larry Wilson Blackstone, Ellen Elizabeth Blackstone, Maurice L. Horsey, III, Minors, by their parents,

vs.

Charles W. Willis,
County Superintendent of Schools
of Harford County.

OPINION AND ORDER, MARCH 4, 1957.

These appeals were filed by the above-named eleven colored children through their respective parents, to the State Board of Education, on December 6, 1956, from the refusal of the Harford County Superintendent of Schools to grant applications for transfer to other schools. These

applications had been made in due course for the opening of school in Harford County in September, 1956. The appeal of a twelfth child, Aurelia H. Boose, was dismissed, as the parents had moved from the County.

An open hearing was held on the appeals on February 27, 1957, by the State Board of Education, the appellants being represented by three attorneys, Tucker R. Dearing, Juanita Jackson Mitchell, and Robert B. Watts. The defendant County Superintendent was represented by two attorneys, Wilson K. Barnes and Edward C. Wilson, Jr. Alexander Harvey, II, Assistant Attorney General of Maryland, appeared as legal advisor to the State Board.

Testimony was taken and recorded, and arguments were heard.

Facts respecting the eleven appellants:

Name	*Grade in Fall of 1956*	*School Attended in Fall of 1956*	*School to Which the County Superintendent Disapproved Transfer*
Dennis Bernard Spriggs	7	Central Consolidated	Edgewood High
Stephen Presbury Moore, III	5	Central Consolidated	Bel Air Elementary
Earlene Scott	2	Central Consolidated	Bel Air Elementary
Mona Leisia Scott	1	Central Consolidated	Bel Air Elementary
Robert McDaniel	4	Central Consolidated	Edgewood Elementary
David Roland Bell	1	Central Consolidated	Youth's Benefit Elementary
James J. Bell, Jr.	3	Central Consolidated	Youth's Benefit Elementary
Bernard Samuel Blackstone	6	Central Consolidated	Bel Air Elementary
Larry Wilson Blackstone	10	Central Consolidated	Bel Air High
Ellen Elizabeth Blackstone	5	Central Consolidated	Bel Air Elementary
Maurice L. Horsey, III	2	Central Consolidated	Jarrettsville Elementary

The Harford County Board of Education adopted the following Desegregation Policy on August 1, 1956:

"The Board of Education of Harford County appointed a Citizens' Consultant Committee of thirty-five members in July, 1955, to study the problems involved in the desegregation of Harford County schools. This committee met in August, 1955 and appointed subcommittees to make intensive studies of several phases of this problem. The full committee held its final meeting on February 27, 1956, heard subcommittee reports, discussed many aspects of the problem, and unanimously resolved:

> To recommend to the Board of Education for Harford County that any child regardless of race may make individual application to the Board of Education to be admitted to a school other than the one attended by such child, and the admissions to be granted by the Board of Education in accordance with such rules and regulations as it may adopt and in accordance with the available facilities in such schools; effective for the school year beginning September, 1956.

This resolution was adopted by the Board of Education at its regular March meeting.

"At the regular June meeting of the Board of Education, a transfer policy was adopted, and procedures for requesting transfers were established.

"The Supreme Court decision, which required desegregation of public schools, provided for an orderly, gradual transition based on the solution of varied local school problems. The resolution of the Harford County Citizens' Consultant Committee is in accord with this principle. The report of this committee leaves the establishment of policies based on the assessing of local conditions of housing, transportation, personnel, educational standards, and social relationships to the discretion of the Board of Education.

"The first concern of the Board of Education must always be that of providing the best possible school system for all

of the children of Harford County. Several studies made in areas where complete desegregation has been practiced have indicated a lowering of school standards that is detrimental to all children. Experience in other areas has also shown that bitter local opposition to desegregation in a school system not only prevents an orderly transition, but also adversely affects the whole educational program.

"With these factors in mind, the Harford County Board of Education has adopted a policy for a gradual, but orderly, program for desegregation of the schools of Harford County. The Board has approved applications for the transfer of Negro pupils from colored to white schools in the first three grades in the Edgewood Elementary School and the Halls Cross Roads Elementary School. Children living in these areas are already living in integrated housing, and the adjustments will not be so great as in the rural areas of the county where such relationships do not exist. With the exception of two small schools, these are the only elementary buildings in which space is available for additional pupils at the present time.

"Social problems posed by the desegregation of schools must be given careful consideration. These can be solved with the least emotionalism when younger children are involved. The future rate of expansion of this program depends upon the success of these initial steps."

An excerpt from the Minutes of the Regular February Meeting of the Board of Education of Harford County, February 6, 1957, entitled "Extension of the Desegregation Policy for 1957-1958," is as follows:

"Applications for transfer will be accepted from pupils who wish to attend elementary schools in the areas where they live, if space is available in such schools. Space will be considered available in schools that were not more than 10% overcrowded as of February 1, 1957. All capacities are based on the state and national standard of thirty pupils per classroom.

"Under the above provision, applications will be accepted for transfer to all elementary schools except Old Post Road,

Forest Hill, Bel Air, Highland, Jarrettsville, the sixth grade at the Edgewood High School, and Dublin. Such applications must be made during the month of May on a regular application form furnished by the Board of Education, and must be approved by both the child's classroom teacher and the principal of the school the child is now attending.

"All applications will be reviewed at the regular June meeting of the Board of Education and pupils and their parents will be informed of the action taken on their applications prior to the close of school in June, 1957."

Sixty colored children applied for transfers to various schools for the September, 1956, opening, of which fifteen applications were approved and forty-five disapproved. The disapproval of the forty-five applications, including the eleven appellants in these appeals, was in accordance with the Desegregation Policy of August 1, 1956.

The State Board finds that the Harford County Board acted within the policy established by the State Board in its Joint Resolution of June 22, 1955, on the subject of Desegregation in the Public Schools and in the State Teachers Colleges of Maryland.

The State Board finds that the County Superintendent acted in good faith within the authority set forth in the August 1, 1956, Desegregation Policy adopted by the County Board of Education. The State Board also finds that the Desegregation Policy was adopted in a bona fide effort to make a reasonable start toward actual desegregation of the Harford County public schools. This initial effort has been carried out without any untoward incidents, which is a credit to the citizens of Harford County, the Citizens' Consultant Committee, and the Harford County public school authorities.

The State Board also takes cognizance of the resolution of the County Board of February 6, 1957, as above mentioned, which sets forth an extension of desegregation to become effective in the fall of 1957, as well as the testimony to the effect that the proposed Harford County Junior College, which is to be established in Bel Air in the fall of

1957, will open on a desegregated basis, and also the testimony to the effect that the present program of new buildings and additions will make further desegregation possible.

The State Board commends all parties, the witnesses, and counsel, in these proceedings, for the fair and dispassionate manner in which the facts and the arguments were presented.

For the foregoing reasons, these appeals are hereby dismissed.

WENDELL D. ALLEN,
President,

JEROME FRAMPTOM, JR.,
Vice-president,

ELIZABETH R. COLE,
WILLIAM A. GUNTER,
DWIGHT O. W. HOLMES,
RUTH L. MARCUS,
GEORGE C. RHODERICK, JR.,
State Board of
Education of Maryland.

(R. 572-573):

DEFENDANTS' EXHIBIT NO. 14

EXCERPT FROM THE MINUTES OF THE REGULAR MAY MEETING OF THE BOARD OF EDUCATION OF HARFORD COUNTY.

May 1, 1957

The Board reviewed its desegregation policy of February 6, 1957. In accordance with this plan, the following elementary schools will be open in all six grades to Negro pupils at the beginning of the 1957-1958 school year:

Emmorton Elementary School

Edgewood Elementary School

Aberdeen Elementary School
Halls Cross Roads Elementary School
Perryman Elementary School
Churchville Elementary School
Youth's Benefit Elementary School
Slate Ridge Elementary School
Darlington Elementary School
Havre de Grace Elementary School
6th Grade at Aberdeen High School

Schools now under construction or contemplated for construction in 1958, if no unforeseen delays occur, will automatically open all elementary schools to Negro pupils by September, 1959. As a result of new construction, the elementary schools at Old Post Road, Bel Air, and Highland will accept applications for transfer of Negro pupils for the school year beginning in September, 1958. Forest Hill, Jarrettsville, Dublin and the sixth grade at the Edgewood High School would receive applications for the school year beginning in September, 1959.

As a normal result of this plant, sixth grade graduates will be admitted to junior high schools for the first time in September, 1958 and will proceed through high schools in the next higher grade each year. This will completely desegregate all schools of Harford County by September, 1963.

The Board will continue to review this situation monthly and may consider earlier admittance of Negro pupils to the white high schools if such seems feasible. The Board reaffirmed its support of this plan as approved by the State Board of Education.

(R. 574):

DEFENDANTS' EXHIBIT NO. 15

May 2, 1957

Wilson K. Barnes, Esq.
Maryland Trust Building
Baltimore 2, Maryland

Re: Stephen Moore, Jr., et al
vs.
Board of Education of
Harford County, et al,
Civil Action No. 9105.

My dear Mr. Barnes:

After conference with my co-counsel and the plaintiffs in the above entitled case, we have come to the conclusion that there is no legally valid reason why the plaintiffs and the class they represent should not be admitted to the high schools of Harford County without any racial restrictions whatsoever.

Kindly let us hear from you at your earliest convenience so that we may put the case in for further hearing and final disposition.

Very sincerely yours,

/s/ JUANITA JACKSON MITCHELL

(R. 575):

DEFENDANTS' EXHIBIT NO. 16

Excerpt from the Minutes of the Regular June Meeting of the Board of Education of Harford County.

June 5, 1957

The Board reaffirmed its basic plan for the desegregation of Harford County schools, but agreed to the following modification for consideration of transfers to the high schools during the interim period while the plan is becoming fully effective.

Beginning in September, 1957, transfers will be considered for admission to the high schools of Harford County. Any student wishing to transfer to a school nearer his home must make application to the Board of Education between July 1 and July 15. Such application well be evaluated by a committee consisting of the high school principals of the two schools concerned, the Director of Instruction, and the county supervisors working in these schools.

These applications will be approved or disapproved on the basis of the probability of success and adjustment of each individual pupil, and the committee will utilize the best professional measures of both achievement and adjustment that can be obtained in each individual situation. This will include, but not be limited to, the results of both standardized intelligence and achievement tests, with due consideration being given to grade level achievements, both with respect to ability and with respect to the grade into which transfer is being requested.

The Board of Education and its professional staff will keep this problem under constant and continuous observation and study.